[redacted]

THE ARKADELPHIA MILLING COMPANY

vs.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.

No. [redacted] (25,674)

JOSEPH F. HASTY, ELIPHAL J. F. HASTY, AND WILLIAM G. HASTY, COMPOSING THE PARTNERSHIP OF J. F. HASTY & SONS, APPELLANTS,

vs.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY AND ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.

No. [redacted] 84

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO. ET AL, APPELLANTS,

vs.

THE SOUTHERN COTTON OIL COMPANY.

No. [redacted] 95

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY ET AL., APPELLANTS,

vs.

THE SOUTHERN COTTON OIL COMPANY.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED JANUARY 4, 1897.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 845.

THE ARKADELPHIA MILLING COMPANY, APPELLANT,

vs.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY AND ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.

No. 846.

JOSEPH F. HASTY, ELIPHALET F. HASTY, AND WILLIAM C. HASTY, COMPOSING THE PARTNERSHIP OF J. F. HASTY & SONS, APPELLANTS,

vs.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY AND ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.

No. 847.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO. ET AL., APPELLANTS,

vs.

THE SOUTHERN COTTON OIL COMPANY.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 2, 1917.

No. 848.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY ET AL., APPELLANTS,

vs.

THE SOUTHERN COTTON OIL COMPANY.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

INDEX.

	Original.	Print
Caption	*a*	1
Record entry consolidating claims of Southern Cotton Oil Company, Arkadelphia Milling Company, and J. F. Hasty & Sons.	1	1
Final decree on claims of Southern Cotton Oil Company, Arkadelphia Milling Company, and J. F. Hasty & Sons	3	3
Record entry filing agreed statement of record	5	4
Agreed statement of record	6	5
Record entry filing assignment of errors, petition for appeal, appeal bond, directions to clerk, directions for printing record, allowance of appeal, and filing citation on intervention of Arkadelphia Milling Company	43	26
Assignment of errors, Arkadelphia Milling Company	44	27
Appeal bond, Arkadelphia Milling Company	46	28
Directions to clerk, Arkadelphia Milling Company	48	30
Directions for printing record, Arkadelphia Milling Company	49	31
Citation and service, Arkadelphia Milling Company	50	31
Record entry filing assignment of errors, petition for appeal, appeal bond, directions to clerk, directions for printing record, allowance of appeal, and filing citation on intervention of J. F. Hasty & Sons	51	32
Assignment of errors, J. F. Hasty & Sons	52	33
Appeal bond, J. F. Hasty & Sons	54	34
Directions to clerk, J. F. Hasty & Sons	56	36
Directions for printing transcript, J. F. Hasty & Sons	57	37
Citation and service, J. F. Hasty & Sons	58	37
Record entry filing assignment of errors, petition for appeal, appeal bond, directions to clerk, directions for printing transcript, allowance of appeal, citation on appeal of St. Louis, Iron Mountain & Southern Railway Company and U. S. Fidelity & Guaranty Company	59	38
Assignment of errors, St. Louis, Iron Mountain & Southern Railway Company and U. S. Fidelity & Guaranty Company	60	39
Appeal bond, St. Louis, Iron Mountain & Southern Railway Company and U. S. Fidelity & Guaranty Company	63	41

	Original.	Print
Record entry filing assignment of errors, petition for appeal, appeal bond, directions to clerk, directions for printing transcript, allowance of appeal, filing citation on appeal of St. Louis Southwestern Railway Company and U. S. Fidelity & Guaranty Company	65	42
Assignment of errors, St. Louis Southwestern Railway Company and U. S. Fidelity & Guaranty Company	66	43
Appeal bond, St. Louis Southwestern Railway Company and U. S. Fidelity & Guaranty Company	69	45
Directions to clerk, St. Louis, Iron Mountain & Southern Railway Company, St. Louis Southwestern Railway Company, and U. S. Fidelity & Guaranty Company	71	46
Directions for printing transcript, St. Louis, Iron Mountain & Southern Railway Company, St. Louis Southwestern Railway Company, and U. S. Fidelity & Guaranty Company	72	47
Citation and service, Southern Cotton Oil Company, intervener	73	47
Stipulation of counsel as to transcripts on appeal	74	48
Clerk's certificate to transcript	75	48

a *Transcript of Record on Appeal.*

From the District Court of the United States for the Western Division of the Eastern District of Arkansas.

In the Cases of

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas,

And

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas.

On the Interventions of Arkadelphia Milling Company, J. F. Hasty & Sons, Southern Cotton Oil Company, Interveners.

J. M. Moore, Moore, Smith & Moore, for Complainants and United States Fidelity & Guaranty Company.
J. F. Loughborough, Rose, Hemingway, Cantrell, Loughborough & Miles, for Interveners.

1 UNITED STATES OF AMERICA,
Eastern District of Arkansas, Western Division:

Be it remembered, That at a District Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the Third day of April Anno Domini, One Thousand, Nine Hundred and Sixteen at the United States Court Room, in the City of Little Rock, Arkansas, the Honorable Jacob Trieber, Judge presiding and holding said Court, the following proceedings were had, to-wit: on June 14th, 1916:

No. 1636.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

vs.

THOMAS E. WOOD et al., Constituting the Railroad Commission of the State of Arkansas,

And

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY

vs.

THOMAS E. WOOD et al., Constituting the Railroad Commission of the State of Arkansas.

On this day comes on for hearing the claims herein of the Southern Cotton Oil Company against the St. Louis, Iron Mountain and Southern Railway Company, and the Southern Cotton Oil Company against the St. Louis Southwestern Railway Company, J. F. Hasty & Sons against the St. Louis, Iron Mountain and Southern Railway Company, J. F. Hasty & Sons against the St. Louis Southwestern Railway Company, and Arkadelphia Milling Company against the St. Louis, Iron Mountain and Southern Railway Company; and on exceptions to the Report of the Master herein, it appearing to the Court that said claims involve similar questions and that inconvenience and unnecessary expense will be saved if they are consolidated for trial on any appeal that may be taken, and all of
2 said parties being present by attorneys and consenting thereto, it is ordered that all of said claims be consolidated for trial on any appeal that may be taken herein.

(Signed) JACOB TRIEBER, *Judge.*

3 UNITED STATES OF AMERICA,
Eastern District of Arkansas, Western Division:

Be it remembered, That at a District Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the Third day of April Anno Domini, One Thousand, Nine Hundred and Sixteen at the United States Court Room, in the City of Little Rock, Arkansas, the Honorable Jacob Trieber, Judge presiding and holding said Court, the following proceedings were had, to-wit: on June 14th, 1916:

No. 1636.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

vs.

WILLIAM F. McKNIGHT, J. SAM ROWLAND, and THOMAS E. WOOD, Constituting the Railroad Commission of the State of Arkansas,

And

No. 1637.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY

vs.

WILLIAM F. McKNIGHT, J. SAM ROWLAND, and THOMAS E. WOOD, Constituting the Railroad Commission of the State of Arkansas.

Now on this day this cause came on to be heard and was argued by counsel, and on consideration thereof, it was ordered, adjudged and decreed as follows:

That the exceptions of the St. Louis, Iron Mountain and Southern Railway Company to the claims of the Southern Cotton Oil Company be overruled, and that the Southern Cotton Oil Company do have and recover of and from the St. Louis, Iron Mountain and Southern Railway Company and the United States Fidelity and Guaranty Company, the surety on the injunction bond herein, the sum of Forty-two thousand, Four Hundred Thirteen Dollars
4 and Sixteen Cents ($42,413.16).

That the exceptions of the St. Louis Southwestern Railway Company to the claim of the Southern Cotton Oil Company be overruled, and that the Southern Cotton Oil Company do have and recover of and from the St. Louis Southwestern Railway Company, and the United States Fidelity and Guaranty Company, the surety on the injunction bond herein, the sum of Six Thousand, Five Hundred Fifty-two Dollars and Three Cents ($6,552.03).

That said judgments bear interest from the date hereof at the rate of six per cent per annum.

That the exceptions of the St. Louis, Iron Mountain and Southern Railway Company, and of the St. Louis Southwestern Railway Company, respectively, to the claim of J. F. Hasty & Sons, against each of said companies, based on the ground that said claims were movements in interstate commerce, and that the rates on which said claims were based were discriminatory, be and the same are hereby sustained.

That the exceptions of the St. Louis, Iron Mountain and Southern Railway Company to the claims of the Arkadelphia Milling Company based on the ground that the rates on which the claims were based were discriminatory, be and the same is hereby sustained. And in as much as the aforesaid grounds of exceptions dispose of

said claims of the said J. F. Hasty and Sons and the Arkadelphia Milling Company, the Court does not consider or pass upon any other exceptions to the allowance of said claims by the Master filed by either the complainants or said claimants, or make any finding as to them.

It is therefore ordered, adjudged and decreed that the aforesaid claims of J. F. Hasty and Sons and the Arkadelphia Milling Company and each of them be disallowed.

(Signed) JACOB TRIEBER, *Judge.*

5 UNITED STATES OF AMERICA,
Eastern District of Arkansas, Western Division:

Be it remembered, That at a District Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the Sixteenth day of October, Anno Domini, One Thousand, Nine Hundred and Sixteen at the United States Court Room, in the City of Little Rock, Arkansas, the Honorable Jacob Trieber Judge presiding and holding said Court, the following proceedings were had, to-wit: on November 20th, 1916:

No. 1636.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas,

And

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas.

Come the complainants by Moore, Smith & Moore, Esqs., their solicitors, and the Interveners, Arkadelphia Milling Company, J. F. Hasty & Sons, and Southern Cotton Oil Company, by Rose, Hemingway, Cantrell, Loughborough & Miles, Esqs., their solicitors, and file herein their statement of the record in this cause, which is examined by the Court and approved by the Judge hereof, and ordered to be made a part of the record herein.

Which Agreed Statement of Record is as follows:

6 In the United States District Court, Western Division of the Eastern District of Arkansas.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants.

And

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants.

On the Claims of the Southern Cotton Oil Company et al.

Agreed Statement of Record.

As the questions presented by the appeal herein can be determined by the appellate court without an examination of all the pleadings and evidence, the parties hereto, having obtained the approval of the court, do prepare and sign the following statement of the case:

On July 18, 1908, the plaintiff, St. Louis, Iron Mountain and Southern Railway Company, and plaintiff, St. Louis Southwestern Railway Company, filed in this Court its bill of complaint
7 against George W. Bellamy, William F. McKnight, and J. Sam Rowland, as Railroad Commissioners of the State of Arkansas, wherein was alleged the valid organization of the Railroad Commission of the State of Arkansas, and the parties named as defendants in said bill were all the members of that Commission, and that the said Commission was authorized to fix rates to be charged by railroads in the State of Arkansas for transportation of freight and passengers in that State. It was further alleged that on June 4, 1908, said defendants, acting in their official capacity as Railroad Commissioners of the State of Arkansas, adopted Standard Freight Distance tariff No. 3, applying on all classes and commodities of freight on all railroads operated in the State of Arkansas, and ordered the same to take effect on June 15, 1908; and it was alleged that all of said rates were unreasonable, unjust, discriminative, confiscatory and void; and said bill contained statements tending to show that all such rates did not yield an adequate return to the plaintiff for the services rendered in the transportation of such freight; and it was further alleged that the rate for the transportation of passengers fixed at two cents per mile by Act of the Legislature of Arkansas on the 9th day of February, 1907, was confiscatory and void as to the plaintiff; and it was alleged that the operation of said freight tariff would deny complainant the equal protection of the law and take its property without due process of

law, and that complainant was without remedy at law and could only obtain relief in a court of equity. It was prayed that said Distance Tariff No. 3 be held void, and that its operation be permanently restrained; and the same prayer was made as to the Act of the Legislature fixing the passenger rates. A temporary injunction was also asked for.

8 On July 25, 1908, the defendants filed their answer to each of the bills of complaint herein, denying in detail the statements in the complaint tending to show that the rates set forth in Standard Freight Distance Tariff No. 3 were unjust, unreasonable, discriminative, confiscatory and void, and prayed that the bill of complaint be dismissed for want of equity.

On September 3rd, 1908, on application of complainant, the Judge of the Circuit Court of Appeals for the Eighth Circuit granted a temporary injunction restraining the Railroad Commission of Arkansas from continuing in effect the rates named in Standard Distance Tariff No. 3, said order containing the following provision as to the bond to be executed by complainant, St. Louis, Iron Mountain and Southern Railway Company:

"It is further ordered that the complainant execute a bond to the United States of America in the penal sum of Two Hundred Thousand Dollars ($200,000.00) conditioned that said complainant shall keep a correct account showing, as respects the carriage of passengers and freight, the difference between the tariff actually charged and that which would have been charged had the rate inhibited been applied, showing the particular carriage in question and the stations between which the same occurred, and the name of the person affected as far as may be practicable, which record shall be made and kept subject to the further order of this Court, and further conditioned that if it should eventually be decided that so much of this order as inhibits the enforcement of the existing rates

9 should not have been made, the said complainant shall, within a reasonable time, to be fixed by Court, refund in every instance to the party entitled thereto, the excess in charge over what would have been charged had the inhibited rates been applied, together with lawful interest and damages."

The same order was made in the case where the St. Louis Southwestern Railway Company was complainant, except the amount of the bond was $200,000.00.

It was further provided in said order that the injunction should take effect upon the filing of said bonds.

On September 12, 1908, said bonds were filed in the sum of $200,000.00, signed by the complainant St. Louis, Iron Mountain and Southern Railway Company and by the St. Louis Southwestern Railway Company in the sum of $200,000.00 with the United States Fidelity and Guaranty Company as surety on each bond, the recitals of said bonds being as follows:

"Know All Men By These Presents, that the above complainant as principal, and the United States Fidelity and Guaranty Company, a corporation of the State of Maryland, as surety, are held and firmly bound unto the United States of America in the penal sum

of Two Hundred Thousand Dollars ($200,000.00), well and truly to be paid in lawful money of the United States, for the payment of which they bind themselves, their successors and assigns firmly by these presents.

"Signed with our hands, and sealed with our seals and dated this 11th day of September, A. D. 1908.

"This bond is made upon the following conditions, to-wit:

"Whereas, the court in the above entitled cause, made an order on the 3rd day of September, A. D. 1908, granting a re-
10 straining order and providing among other things as follows to-wit:

"'It is further ordered that complainant execute a bond to the United States of America in the penal sum of Two Hundred Thousand Dollars ($200,000.00), conditioned that said complainant shall keep a correct account showing, as respects every carriage of passengers or freight, the difference between the tariff actually charged and that which would have been charged had the rate inhibited hereby been applied, showing the particular carriage in question and the stations between which the same occurred, and the name of the person affected as far as may be practicable, which record shall be made and kept subject to the further order of this court, and further conditioned that if it should eventually be decided that so much of this order as inhibits the enforcement of existing rates should not have been made, that said complainant shall, within a reasonable time, to be fixed by the Court, refund in every instance to the party entitled thereto, the excess in charge over what would have been charged had the inhibited rates been applied, together with lawful interest and damages'.

"Now, if the above named complainant, St. Louis, Iron Mountain and Southern Railway Company, shall well and truly keep and perform all and singular the conditions of said restraining order as above set forth, then this obligation shall be null and void, otherwise to be and remain in full force and effect.

"In Testimony Whereof, the above bounden principal has caused its corporate name to be hereunto subscribed by its Vice President and its corporate seal to be hereunto affixed and duly at-
11 tested, and said surety has caused its corporate name to be hereunto subscribed, and its corporate seal to be hereunto affixed, by Sam W. Reyburn and D. H. Cantrell, its duly authorized attorneys in fact for this purpose this 11th day of September, A. D. 1908.

[SEAL.] "ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY,
By C. S. CLARK, *Vice-President.*

"Attest:
F. W. IRELAND,
Assistant Secretary.

"UNITED STATES FIDELITY AND GUARANTY CO.,
By SAM W. REYBURN,
D. H. CANTRELL, *Attorneys-in-Fact.*"

The amount of the bond filed by the St. Louis Southwestern Railway Company was $200,000.00.

On the 18th day of February, 1909, the defendants in said proceedings, namely: the St. Louis, Iron Mountain and Southern Railway Company vs. R. P. Allen and others, State Railroad Commissioners, and St. Louis Southwestern Railway Company vs. same defendants, the said Allen and others being the predecessors in office of the present defendants, filed motions to dissolve or modify the temporary injunctions in said causes, alleging among other things that after the granting of said injunctions complainants therein had severally put in freight tariffs containing unreasonable increases in the rates charged for transportation of freight between points in said state, and praying that said injunctions be dissolved, or, if not dissolved, that they be so modified as to require each of the complainants to put into force and effect a tariff containing reasonable rates for transportation of freight in said State.

12 Thereupon a hearing was had on said motion and a large amount of evidence taken in support of and against the charge that complainant had put in unreasonable rates, and on the first day of June, 1909, said motion coming on for hearing on the evidence introduced thereon, the court made the following order, namely:

"The court being sufficiently advised as to what disposition to make of the motion to modify the temporary injunction heretofore granted in this case, and which was submitted at a previous day of this term,

"It is ordered, adjudged and decreed that, in addition to the conditions upon which temporary injunction was granted herein, the following conditions be and they are hereby prescribed by the Court:

"That from the affidavits and evidence submitted the court finds that the tariff of freight charges put into effect by the said St. Louis, Iron Mountain and Southern Railway Company since the granting of the temporary injunction is unreasonable, and therefore,

"It is ordered that the freight rates pending this action to be charged by the said Railway Company shall be so arranged as to produce a net increase of thirty-three and one-third (33⅓) per cent of the revenue produced by Standard Distance Tariff No. Three (No. 3), put into effect by the defendants, the Board of Railroad Commissioners, and in force at the time the temporary injunction was granted; and that the same be put in effect not later than June seventh (7th), 1909, and continued in force until the further order of the Court, with leave to either party to apply to the court

13 for a modification of said tariff if it shall be found that it does not conform to the order of the court in respect to the aforesaid increase in the revenue of the said St. Louis, Iron Mountain and Southern Railway Company.

"And thereupon come the parties and file a tariff which both parties believe conforms to the order of the court, and said tariff is ordered to be filed marked "Exhibit A" to the decree modifying a temporary injunction and made a part of the record in this cause.

"It is further ordered that the security given by the said St. Louis, Iron Mountain and Southern Railway Company upon the granting of the preliminary injunction shall in no wise be affected by this

order, but shall remain liable in the same manner for the rate charged under the tariff promulgated under this order of court, as if this order had been embodied in the order granting the preliminary injunction; and a failure to comply with the schedule herein filed shall be cause for the dissolution of the temporary injunction.

"(Signed) JACOB TRIEBER, *Judge.*"

An order in the same words was entered at the same time in the case of the St. Louis Southwestern Railway Company.

The tariffs referred to in said order took effect on June 1st, 1909, and continued in force from that time continuously until July 18th, 1913.

On June 23, 1909, the judge of the District Court for this District entered a norder requiring the complainant St. Louis, Iron Mountain and Southern Railway Company to execute an additional bond in the sum of $800,000.00, signed by itself, without additional sure-
14 ties, said order requiring that said bond be conditioned:

"That it (complainant) shall on and after July 1st, 1909, issue to each person purchasing a ticket or paying cash fare upon the train from one point in the State of Arkansas to another point in the same State, and confined exclusively to intrastate travel, a certificate or coupon showing the amount paid by such passenger for such ticket and the date thereof; and to every shipper or consignee when paying freight on any commodity shipped from one part of the State of Arkansas to another part and which is wholly the subject of intrastate traffic, a receipt or freight bill, showing the amount charged for the carriage of such freight and also endorse on the same bill the amount or rate which would have been charged had the inhibited rate continued in force; which receipt or coupon or freight bill shall be prima facie evidence of the amount paid and the date of payment. The complainant shall keep a correct account showing as respects the carriage of freight and passengers the difference between the amount actually charged and that which would have been charged had the inhibited rates been applied, and further conditioned that if it should eventually be decided that so much of this order as inhibits enforcement of the rates prescribed by the Railroad Commission of the State of Arkansas in Distance Tariff No. 3, and the two cent per mile passenger rate prescribed by the Statute of 1907, should not have been made, that the complainant shall refund to the owners and holders of the certificates issued by it, the excess charges as shown by the same, provided, however, that such certificates as to the amounts and
15 dates shall only be prima facie evidence of these facts. Such bond shall be in addition to the bond heretofore executed and not in lieu thereof."

A similar order was entered on the same day as to the St. Louis Southwestern Railway Company, with the exception that the bond required of it was to be in the penal sum of Three Hundred Thousand Dollars ($300,000.00).

Said bond of the St. Louis, Iron Mountain and Southern Railway Company being as follows:

"Know All Men by These Presents: That the St. Louis, Iron Mountain and Southern Railway Company is held and firmly bound unto the United States of America in the penal sum of Eight Hundred Thousand Dollars ($800,000.00), for the payment of which it hereby binds itself, its successors and assigns.

"The condition of this obligation is such that:

"Whereas, in a suit of the above bounden (a corporation) against Robert P. Allen, John W. Crockett and John E. Hampton, Railroad Commissioners of the State of Arkansas, Henry Leigh and George McLean, an order of temporary injunction was issued enjoining and restraining the defendant Railroad Commissioners of the State of Arkansas from enforcing certain freight and passenger rates in said State; and,

"Whereas, it was subsequently ordered in said proceedings:

" 'That complainant execute a bond to the United States of America in the penal sum of Eight Hundred Thousand Dollars ($800,000.00) signed by itself without additional sureties, conditioned that it shall, on and after July 1st, 1909, issue to each person pur-

16 chasing a ticket or paying cash fare upon the train from one point in the State of Arkansas to another point in the same State, and confined exclusively to intrastate travel, a certificate or coupon showing the amount paid by such passenger for such ticket and the date thereof; and to every shipper or consignee when paying freight on any commodity shipped from one part of the State of Arkansas to another part, and which is wholly the subject of intrastate traffic, a receipt or freight bill showing the amount charged for the carriage of such freight and also endorse on the same bill the amount or rate which would have been charged had the inhibited rate continued in force; which receipt or coupon or freight bill shall be prima facie evidence of the amount paid and the date of payment. The complainant shall keep a correct account showing as respects the carriage of freight and passengers, the difference between the amount actually charged and that which would have been charged had the inhibited rates been applied, and further conditioned that if it should eventually be decided that so much of this order as inhibits enforcement of the rates prescribed by the Railroad Commission of the State of Arkansas in Distance Tariff No. 3 and the two cent per mile passenger rate prescribed by the Statute of 1907, should not have been made, that the complainant shall refund to the owners and holders of the certificates issued by it, the excess charges as shown by the same; provided, however, that such certificates as to the amounts and dates shall only be prima facie evidence of these facts,'

"Now, therefore, if the said St. Louis, Iron Mountain and Southern Railway Company shall comply with and perform each

17 and all of the terms, conditions and provisions above set forth, and shall issue the certificates or coupons to passengers, receipts or freight bills to shippers and consignees and keep the accounts as required by said order to be kept, and make the payments or refunds as herein provided to be made, if it should eventually be decided that so much of said order of injunction as inhibits the enforcement of said inhibited rates should not have been made, then

this ob.:gation shall be null and void, otherwise to remain in full force and effect.

"In Witness Whereof, the said St. Louis, Iron Mountain and Southern Railway Company, has caused these presents to be executed this the third day of July, 1909.

[SEAL.] "(Signed) ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY,
By C. S. CLARK, *Vice-President.*

Attest:
F. W. IRELAND,
Assistant Secretary."

The bond of the St. Louis Southwestern Railway Company, in like tenor and effect, in the sum of Three Hundred Thousand Dollars ($300,000.00) was also filed.

Much testimony was taken by the complainant and the defendants to sustain their respective contentions; and on May 11th, 1911, the cause came on for final hearing, and the following decree was rendered by this court in both cases:

"Now on this day comes the complainant, by its solicitors, Moore, Smith & Moore, Esqs., and also come the defendants, by their solicitors, Joseph M. Hill and James H. Harrod, Esqs., and thereupon, said cause having been argued upon the evidence and stipulations on file and of record in said cause, and having been taken under
18 advisement at a former term of this Court, and the Court being well and sufficiently advised in the premises,

"It is accordingly ordered and decreed that the defendants, Robert P. Allen, George W. Bellamy and William F. McKnight, as Railroad Commissioners of the State of Arkansas, and Henry Leigh and George McLean, and each of them, their agents, employees and successors, as well as all other persons patrons of complainant, either in the shipment of freight, or as passengers between stations on complainant's road in the State of Arkansas, are hereby perpetually enjoined from enforcing or attempting directly or indirectly by any suit or in any manner whatsoever to enforce against the complainant, its officers, agents, employees, servants, any of the provisions of Standard Freight Distance Tariff No. 3, and amendments thereto adopted prior to the institution of this action, prescribing the rate or rates for the transportation of classes and commodities or any provisions of said tariff whereby any of said rates shall be continued in force, or from enforcing or attempting directly or indirectly, by any suit or in any other manner whatsoever, to enforce against the complainant, its officers, agents, or servants, any of the provisions of an Act of the General Assembly of the State of Arkansas, entitled: 'An Act to Amend Section 6611 of Kirby's Digest of the Statutes of Arkansas, by fixing Passenger Rates in this State, and for other Purposes," approved February 9th, 1907, or to enforce the provisions of any other act or acts of the Legislature of said State providing penalties for non-compliance

by complainant with the provisions and requirements of
19 Standard Freight Distance Tariff No. 3, and amendments thereto as aforesaid, or the aforesaid Act of the Legislature of the State of Arkansas, fixing passenger rates in said State.

"It is further ordered that the costs incurred by the complainant and defendants respectively, in procuring the attendance of witnesses before the Master and the payment of the fees of stenographers in the recording of said testimony be borne by the complainant and the defendants, Robert P. Allen, George W. Bellamy and William F. McKnight, and that neither party recover from the other therefor; that all remaining costs including Master's fees, the complainant pay one-fourth and the defendants, Robert P. Allen, George W. Bellamy and William F. McKnight, Railroad Commissioners as aforesaid pay one-half, the other fourth to be paid by the complainant in case No. 1636, the payment of said costs to be recovered by execution to be issued by the Clerk of this Court upon application of either party in interest.

"It is further ordered that the bond for injunction filed by the complainant here be released and the sureties thereon discharged from liability.

"And the Court reserves and retains unto itself jurisdiction of the subject matter of this suit and of all parts thereto to the end that such other and further orders and decrees may be made herein as may become necessary herein by reason of any changed conditions as to the facts, equities or rights that may hereafter take place or arise.

"(Signed) JACOB TRIEBER, *Judge.*"

From these decrees appeals were taken by the defendants to the Supreme Court of the United States; and on the hearing by that Court the decrees were reversed and the causes remanded,
20 with directions to the District Court to dismiss the bill of complaint without prejudice.

The mandates from the Supreme Court of the United States were filed in this court on June 18th, 1913, and the following shows the provisions of said mandate and the order of the District Court thereon:

"Be it remembered, that at a District Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the seventh day of April Anno Domini, One Thousand Nine Hundred and Thirteen at the United States Court Room, in the City of Little Rock, Arkansas, the Honorable Jacob Trieber, Judge presiding and holding said Court, the following proceedings were had, to-wit: on July 18, 1913:

"This cause came on for hearing this day, the parties appearing by their respective solicitors, and thereupon the defendants filed the Mandate of the Supreme Court of the United States in this cause under the style of Robert P. Allen, George W. Bellamy and William F. McKnight, Railroad Commissioners of the State of Ar-

kansas, Henry Leigh and George McLean vs. St. Louis, Iron Mountain and Southern Railway Company, which mandate is in words and figures as follows, to-wit:

'UNITED STATES OF AMERICA, *ss:*

'The President of the United States of America to the Honorable the Judges of the District Court of the United States for the Eastern District of Arkansas, Greeting:

'Whereas, lately in the Circuit Court of the United States
21 for the Eastern District of Arkansas, in a cause between St. Louis, Iron Mountain and Southern Railway Company, complainant, and Robert P. Allen, George W. Bellamy and William F. McKnight, Railroad Commissioners of the State of Arkansas, and Henry Leigh and George McLean, defendants, No. 1637, wherein the decree of the said Circuit Court, entered in said cause on the 11th day of May, A. D. 1911, is in the following words, viz:

(Here was recited the decree of the District Court from which the appeal was taken, and which appears herein immediately preceding this mandate.)

as by the inspection of the transcript of the record of said cause of the said Circuit Court, which has been brought into the Supreme Court of the United States by virtue of an appeal taken by Robert P. Allen, George W. Bellamy and William F. McKnight, Railroad Commissioners of the State of Arkansas, agreeably to the Act of Congress, in such case made and provided, fully and at large appears.

'And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and twelve, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel.

'On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said Circuit Court in this cause be, and the same is hereby, reversed with costs, and that the said Robert P. Allen, et al., Commissioners etc., recover against the said complainant Three Thousand One Hundred and Two Dollars and Fifty-two Cents for their costs herein expended and have execution therefor.

22 'It is further ordered that this cause be, and the same is hereby, remanded to the District Court of the United States for the Eastern District of Arkansas, with directions to dismiss the bill without prejudice. June 16th, 1913.

'You therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and decree of this Court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

'Witness the Honorable Edward D. White, Chief Justice of the

United States, the eleventh day of July, in the year of our Lord one thousand nine hundred and thirteen.

'(Signed) JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.'

"Thereupon, in obedience to the foregoing mandate, it is by the Court, ordered, adjudged and decreed that the bill of complaint of the plaintiff herein originally brought against Robert P. Allen, John E. Hampton and John W. Crockett, Railroad Commissioners of the State of Arkansas, and Henry Leigh and George McLean, and in which action by appropriate orders heretofore made, William F. McKnight, George W. Bellamy and J. Sam Rowland have been substituted as defendants, as successors of the former defendants, the Railroad Commission of the State of Arkansas, be and the same is hereby dismissed without prejudice.

"It is further ordered, adjudged and decreed by the Court
23 that the temporary and permanent injunctions heretofore granted in this cause be, and the same is hereby, dissolved, and that the defendants, the Railroad Commission of the State of Arkansas, do have and recover of and from the complainant herein all their costs herein expended by them, including the costs adjudged to them by the Supreme Court of the United States in this cause, for which execution may issue as in actions at law. That the said costs be taxed by the Clerk of this Court subject to review upon the request of either party by the Court.

"And thereupon, the Court, of its own motion, and against the objection of the complainant, refers, under Rule 15 of this Court, the matter of damages alleged to have been sustained by the defendants, the Railroad Commissioners of the State of Arkansas, by reason of the granting of the temporary and permanent injunctions herein, to Jeremiah G. Wallace, Esq., who is hereby appointed a Special Master for the purpose of determining the damages sustained. That in determining these damages, for the recovery of which the said Commissioners are not acting for themselves but for the benefit of all persons, shippers, consignees and passengers, who have sustained any damages by reason of the granting of said injunctions, the Master is hereby authorized, for the purpose of ascertaining these facts, to examine witnesses, administer oaths, and call upon the plaintiff herein for any books, papers, or transcripts thereof, which, in his opinion, are necessary for the purpose of enabling him to determine any facts in issue in connection with any claim filed with him.

"It is further ordered by the Court that any books, re-
24 ports or transcripts thereof, called for by said Master shall be furnished by the plaintiff herein as speedily as possible.

"And the Master is further directed to give notice by publication in seven newspapers published in the State of Arkansas, one published in each of the following cities in the State, to-wit: Little Rock, Fort Smith, Pine Bluff, Texarkana, Camden, Jonesboro and Helena, and also in such other papers as the Master may deem proper, to the effect that all persons having any claims against the

complainant by reason of the granting of the injunctions herein, shall present the same to him on or before the 1st day of November, 1913, by filing with him the evidence of their claims, or such other proof as they possess. That said notice shall be published in said newspapers once a week for four weeks in all of said papers.

"The Master will report separately all claims which arose under the first temporary injunction granted by the Honorable Willis Van Devanter; next, of all claims which arose under the bond executed in pursuance of the order made by the Honorable Jacob Trieber, District Judge, in this case, and next report all claims which arose after the final decree making the injunction permanent was rendered.

"The Master is hereby authorized to employ such clerical assistance as in his judgment may be necessary for the purpose of aiding him in the performance of his duties.

"The complainant is directed to instruct its agents to furnish the shippers and consignees whose bills have been lost, mislaid or destroyed, or are in the possession of the complainant, such
25 information as appears from their records or is in their possession, to enable the parties to prepare their claims.

"The Master will make a report of his findings to the Court, together with any evidence that may have been taken.

"The Court reserves the power to make any additional order or instructions for the guidance of the Master in this cause."

On the 2nd day of December, 1914, the Master appointed herein filed his report showing in detail the claims filed, and those allowed and those disallowed, and showing in his report the claims filed, allowed and disallowed by him in three separate periods, as directed by the Court in the order appointing him, one being the period from the time of the issuance of the interlocutory injunction herein on September 3rd, 1908, to the time that the additional bond was filed on July 5th, 1909. This was termed in the Master's Report "Series A." One, the period between July 5th, 1909, and May 11th, 1911, the time of the final decree herein by the District Court, and this was termed "Series B." Another, the period between May 11th, 1911, and the date the decree was entered by the District Court putting in force the Mandate of the Supreme Court of the United States, to-wit: July 18th, 1913, and this was termed "Series C."

The claim of the Southern Cotton Oil Company was allowed by the Master in the following amounts:

Against the St. Louis, Iron Mountain and Southern Railway Company:

In Series	A	$6,401.10
" "	B	$12,671.20
" "	C	$13,000.63

26 Against the St. Louis Southwestern Railway Company:

In Series	A	$756.19
" "	B	$1,795.34
" "	C	$2,210.64

To these allowances the complainants and each of them duly excepted within the time allowed by law, and respectively filed the following exceptions and no others to said claims:

Exception No. 1. Because in the final decree entered in said cause on the 11th day of May, 1911, it was ordered and decreed that the injunction bond filed by complainant in said cause be discharged and the makers thereof released from liability, the effect of which order was to relieve complainant and the sureties on said bond from all liability by reason of the granting of said preliminary injunction, as well as by reason of the final decree entered in said cause perpetuating said injunction.

Exception No. 2. As to all such claims for overcharges as accrued subsequent to the date that the final decree in said cause was entered, viz: the 11th day of May, 1911, which are embraced in the class of claims designated by the Special Master as Series C, and to the finding and allowance made by the Special Master in connection with said claims, complainant excepts on the ground that at and after the rendition of the final decree in said cause the injunction bonds filed by complainant ceased to be operative or to create any further liability on the part of the complainant or the sureties therein, and complainant incurred no liability to said claimants or any of them under said final decree perpetuating said injunction, the same having been based on a final hearing and determination by the Court of the issues involved in said cause, and constitutes a final adjudication thereof.

27 The Court overruled said exceptions and sustained the said allowance made by the Master and held that the items of said claims should bear interest at six per cent per annum from the respective dates the overcharges were made.

Complainants objected to the said allowance of interest, but the parties agreed that if the allowance of interest was proper it should be computed from an average time in each series as follows:

In Series A, from January 3, 1909,
" " B, " May 22, 1910,
" " C, " June 13, 1912,

and also excepted to the overruling of said exceptions.

The following are the facts on the following claims based on the so-called rough material rates on which the Master found the following amounts due the respective claimants from the respective railroad companies:

Against the St. Louis, Iron Mountain and Southern Railway Company in favor of J. F. Hasty & Sons, a partnership composed of Joseph F. Hasty, William C. Hasty and Eliphalet F. Hasty:

In Series A	$1,153.36
" " B	$5,923.85
" " C	$9,259.12
Total	$16,336.33

Against the St. Louis, Iron Mountain and Southern Railway Company in favor of the Arkadelphia Milling Company, a corporation organized under the laws of Arkansas:

In Series	A	$1,634.51
" "	B	$6,010.45
" "	C	$2,175.46
	Total	$11,820.42

28 Against the St. Louis Southwestern Railway Company in favor of J. F. Hasty and Sons:

In Series	A	$162.02
" "	B	$534.37
" "	C	$384.02
	Total	$1,080.41

That all of said claims and the allowances of the Master thereon are based upon the difference between the rates charged while the injunction herein was in force and the rates provided in Standard Freight Distance Tariff Number Three on the movement of rough material, the said tariff having been promulgated by the Railroad Commission of the State of Arkansas, taking effect June 15th, 1908, being the tariff enjoined in this proceeding, the said tariff containing the following provisions in regard to the application of said rates:

"Item 79. Rough Material Rates.

(*a*) Rough Material Rates applicable on Rough Lumber, Staves, Flitches, Bolts, and Logs, car loads, between all points in Arkansas, minimum weight. In cars of 40,000 pounds or greater marked capacity, the minimum weight will be 40,000 lbs. In cars of less than 40,000 pounds marked capacity, the minimum weight will be the marked capacity of the car.

Distance.	Rates in cents per hundred pounds.
1 to 50 miles, inclusive	2 cents.
51 to 100 " "	2½ "
101 to 150 " "	3½ "
151 to 250 " "	5 "
251 miles and over	8 "

(*b*) The above named rates are conditional upon the manufactured product being reshipped over the same line bringing in the rough material, and may be only used subject to the following conditions: The proportion of the tonnage of outbound manufactured product to the tonnage of in-bound rough material shall not be less than the following:

29

Finished Lumber, 60 per cent of weight of rough lumber.
Finished Staves, 40 per cent of weight of rough staves.
Spoke Bolts, sawed to shape, 40 per cent of weight of rough bolts.
Rough Spokes, 20 per cent of weight of spoke bolts.
Handles, 20 per cent of weight of handle bolts.
Hoops, 15 per cent of weight of flitches.
Hubs, 16⅔ per cent of weight of hub bolts.
Staves and Heading, 30 per cent of weight of bolts.
Boat Oars, 20 per cent of weight of rough material.
Furniture, 60 per cent of weight of rough material.
Lumber, 33⅓ per cent of weight of logs.
All other finished products, 60 per cent of weight of rough material.

(*c*) The rates named above are intended to be used as rough material rates only and carriers will be allowed by the Commission to require consignees desiring to avail themselves of the benefit of same to enter into a suitable contract with reference to the re-shipment of the specified percentage of the finished product; Provided, the terms of said contract must be satisfactory to and approved by the Commission; Provided further, That in no case shall the contract provide a higher rate on in-bound shipments than outlined in the above table.

(*d*) The rates provided in this order do not include switching charges at point of shipment or at destination. All such charges will be assessed and collected in addition to the regular freight charges.

(*e*) The rates provided in this order shall not apply to joint shipments. (Order 342.)

(*f*) Effective November 1, 1907—"The proportion of the tonnage of out-bound manufactured product to the tonnage of in-bound rough materials shall not be less than the following:

Shuttle Blocks, 30 per cent weight of rough material." (Order 352.)"

That the aforesaid claimants shipped over the line of railroad that brought in the rough material, the requisite percentages of manufactured product named in said Item #79 of said Tariff, in the usual cou-se of business as hereinafter described.

That said tariff also carried other schedules of rates applicable to the movement of the same commodities as those covered by the above claims where there was to be no reshipment of the in-bound rough material in its finished state from the mill, said rates being known as the flat or local rates and are covered by Items 40 and 41, which are as follows:

Item #40. Lumber Rates will apply on lumber, except Walnut, Butternut, Cherry and Woods of value; also on the following articles, in straight or mixed carloads:

Base Boards.

Bed Slats.

Blocks, Corner and Base.
Blocks, Head and Plinth.
Box Lumber or Shooks, including Scarfed Berry Box Material, in bundles or racks.
Carpenter's Mouldings.

Casing.
31

Combined Lath and Sheating.
Curtain Poles, in the rough, cut to dimensions and turned.

Cross Arms.
Fence Posts.
Guttering, rough.
Lath, Pine.
Telegraph and Telephone Poles.

Walnut Logs, not squared.
Window Stools, Aprons and Hoods.

Lumber, including Ceiling, Flooring (except Wood Carpet).
Wainscoting, Match Blocks and Circus Seats (not upholstered nor with backs).

Paving Blocks.

Piles.
Plow Handles, not further finished than planed and hand holes shellac-ed.
Rough Sawed Hewn Shapes for Agricultural Implements and Vehicles not further finished than planed.

Sawed and Bent Shapes for Agricultural Implements and Vehicles not further finished than planed.

Shingles.
Spools (for barbed wire), K. D.
Stave Bolts.
Tank Material, sawed in shape, racked up.
Well Tubing.

Item 40.

Distance—Miles.	Lumber, laths, and shingles.
5 and under	3
10 and over 5	3
15 and over 10	3
20 and over 15	3
25 and over 20	3
30 and over 25	4
35 and over 30	4
40 and over 35	4
45 and over 40	4
50 and over 45	4
55 and over 50	4½
60 and over 55	4½
65 and over 60	4½
70 and over 65	4½
75 and over 70	4½

32

80 and over 75	5
85 and over 80	5
90 and over 85	5
95 and over 90	5
100 and over 95	6
110 and over 100	6
120 and over 110	6
130 and over 120	6
140 and over 130	6
150 and over 140	7
160 and over 150	7
170 and over 160	7
180 and over 170	7
190 and over 180	7
200 and over 190	8
210 and over 200	8
220 and over 210	8
230 and over 220	8
240 and over 230	9
250 and over 240	9
260 and over 250	10
270 and over 260	10
280 and over 270	12
290 and over 280	12
300 and over 290	

Articles taking higher than lumber rates:

Walnut, Butternut and Cherry Lumber and Walnut Logs (squared), car loads, 3 cents above Lumber Rates.

Mahogany, Holly, and Woods of Value, see Classification.

33 All other woods, Lumber rates.

The following articles, when loaded in straight or mixed car loads, will take 3 cents per 100 pounds above the Lumber Rates, subject to the minimum weights governing shipments of Lumber. When Loaded with Articles taking Lumber Rates, they will take 5 cents over the Lumber Rates on the actual weight of such articles, provided they are specified on the shipping tickets; if not so specified, the regular less car load rating will apply; the total charges on the entire car load, however, not to exceed the charges on a straight or mixed car load or articles taking three (3) cents per 100 pounds above the Lumber Rates:

Angle Beads.
Astragals.
Balusters.
Balustrade Work.
*Base Boards.
Blinds, Inside and Outside.
*Blocks, Coner and Base.
*Blocks, Head and Plinth.
Cresting.
Door Jambs.
Doors, Panel.
Doors, Screen.
Doors, glazed, with common window glass, or unglazed (if glazed, released).
Gable Ornaments.

34

Grille Work.
Panel Jambs.
Panel Wainscoting and Ceiling.
Pantry Fittings.
Pilasters.
Porch Newels.
Porch and Piazza Columns.
Porch Railing.
Portiere Work.
*Carpenters' Mouldings.
*Casings.
Closet Fittings.
Closet Seats.
Closet Tanks.
Corner Beads.
Cornice Brackets.
Rosettes.
Sash, glazed, with common window glass, or unglazed if glazed, released.
Scroll Work.
Shelves.
Shutters, Inside and Outside.
Spindles.
Stair Work, Newels, Risers, treads, Railing, Balusters, and Post Ornaments, K. D., and taken part.
Store Fronts.
Turned Work, entering into the construction of buildings.
*Wainscoting.
Wash Tub Covers.
Window, Door, Blind and Screen Frames, set up or K. D.
Windows, Screen.
*Window, Stools, Aprons and Hoods.
Porch Work.

The basis for rates on Inside Finish Material will not apply on articles named when polished or varnished.

NOTE.—The foregoing rates will not apply on the articles named when manufactured from Mahogany, Rosewood, Lignum Vitae, or other valuable foreign woods.

The following articles, when loaded in straight or mixed car loads, will take 3 cents per 100 pounds above the Lumber Rates:
Ax Handles, turned, not further finished.
Handle Butts, turned, not otherwise finished.
Last, in rough.
Sleigh Wood, turned, not otherwise finished.

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*Applies when manufactured from woods other than those enumerated above as taking Lumber Rates.

Shapes for Vehicles, dressed.
Shapes for Agricultural Impliments, dressed.
Wagon Bows.

NOTE.—The less car load rates on Wooden CrossArms for telephone, telegraph and electric light poles will be 300 per cent of the car load Lumber Rate.

	Car loads. Minimum weight.
Shingles, Car Load	24,000

All other articles taking lumber rates and higher minimum weight, car load, shall be 30,000 pounds, except when car is loaded to full visible capacity, when actual weight shall govern, subject to a minimum weight of 24,000 pounds.

Piling, Logs, Telegraph or Telephone Poles and other Long Timbers requiring more than one car, shall be charged for at a minimum weight of 20,000 pounds for every car used.

"Dowell Pins, straight car load, 5 cents per cwt. higher than Lumber Rates." (Order 360.)

The rate on Portable Houses, K. D., carload will be made 3 cents higher than the car load rates on Lumber. (Order 301.)

"Brick, not exceeding 2,000 in number; Lime, not exceeding 3 barrels, and sand not exceeding 2 yards, may be included in each car of Lumber, or Lumber and Articles included in the Lumber mixture, and such brick, Lime, and Sand so included shall be charged for at the car load Lumber Rate." (Order 343.)

Item #41. Staves, Headings and Hoops.

	Car loads. Minimum Weight.
Straight or Mixed Car Loads	30,000

Distance—Miles.	Item 41. Staves and Headings.
5 and under	3
10 and over 5	3
15 and over 10	3
20 and over 15	4
25 and over 20	4
30 and over 25	4½
35 and over 30	4½
40 and over 35	4½
45 and over 40	4½
50 and over 45	4½
36	
55 and over 50	5
60 and over 55	5
65 and over 60	5
70 and over 65	5

75 and over 70 5
80 and over 75 6
85 and over 80 6
90 and over 85 6
95 and over 90 6
100 and over 95 6
110 and over 100 7
120 and over 110 7
130 and over 120 7
140 and over 130 7
150 and over 140 7
160 and over 150 8
170 and over 160 8
180 and over 170 8
190 and over 180 8
200 and over 190 8
210 and over 200 9
220 and over 210 9
230 and over 220 9
240 and over 230 10
250 and over 240 10
260 and over 250 10
270 and over 260 11
280 and over 270 11
290 and over 280 13
300 and over 290 13

37 That neither of the defendants' railway Companies submitted to the Arkansas Railroad Commission a form of contract referred to in Item 79 of said Tariff for its approval.

The term "injunction in force," refers to the period after the temporary injunction was issued herein, on September 3rd, 1908, restraining the operation of the said tariff issued by the Arkansas Railroad Commission, until the entry of the mandate of the Supreme Court of the United States, July 18th, 1913, reversing the final decree herein.

That the shipments on which the foregoing claims are based were either of "bolts," "rough staves" or "rough heading" from the woods to the mills of the respective claimants, except that a part of the claim of the Arkadelphia Milling Company was based upon rough material in the form of rough lumber shipped to their mill. In the woods, trees would be cut down and sawed into lengths, and these lengths would be split into quarters or a less fraction of the piece. "Bolts" were the parts into which a length or cut was split, from which several barrel staves, or pieces of barrel heading or hoops, could be made; "rough staves" or "rough heading" were pieces of the size from which but one stave or piece of heading could be made. Some of the shippers whose claims are involved manufactured their rough material only into staves, some only into heading or hoops and some into more than one of such parts. When the rough material reached the mills, it was manufactured into finished staves, headings

and hoops, and in this condition shipped to whoever purchased them. The purchaser uses them in making barrels, casks, etc. The wastings in the finishing of said articles from the rough material were either disposed of for fire-wood, or destroyed. When the rough material left the woods, a bill of lading was issued from the woods
38 to the mill. When the rough material reached the mill, it was finished into some or all of the articles described, when it was stacked in the yards or placed in kilns to dry. The process of manufacturing and drying occupied several months, or on an average this process would be gone through with, the finished products sold and shipped to the purchaser in about five months from the date the rough material was received at the mill. The claimants classified the different parts after they came from the mill completely finished, and made sales from such stock. The markets for the manufactured articles were almost altogether in other states than Arkansas, or in foreign countries, and about ninety-five per cent of the sale of finished articles, that is, of the total outbound shipments, were made for delivery at points outside the State of Arkansas, the remaining five per cent being sold and delivered, or shipped to points within the State of Arkansas. At the time the rough material was shipped to the mills, the mills did not know to whom they would sell the finished product, or to what points it would be shipped, but did know that there was little market for the finished articles in the State of Arkansas, and expected that they would sell ninety-five per cent of said finished articles and ship them to points outside the State of Arkansas.

It was the intention of all the claimants herein at the time they shipped the rough material into the milling points to mill said rough material with the object of selling the said finished product and shipping it out as soon as practicable and all of them knew and intended at the time they brought the rough material into the mill on account of previous course of dealings in the business, that ninety-five per cent of the finished product would be by them shipped to
39 points outside the State of Arkansas.

The claimants paid the usual property tax to the State of Arkansas on their stock of materials on hand at the milling point, whether said stock was in the rough or finished, the amount of the tax being arrived at according to the methods in use in the State of Arkansas by the use of an average basis.

The rates charged on the rough material from the woods to the mill while Standard Distance Tariff No. 3 was suspended by the injunction herein were lower than the local rates named in that tariff, but were greater than the rough material rates named in that tariff.

On the shipment of the outbound product from the mill to its destination the freight rates charged were the regular rates in force at the time on these commodities between those points, and the shipments went forward on the ordinary way bills between those points.

As to the part of the claim of the Arkadelphia Milling Company that was based on rough lumber shipped to their mill, the rough lumber was manufactured into dressed lumber, stored in their yards, and later sold and shipped to whoever purchased it, in the same man-

ner as was done with bolts and staves in the stave business as hereinbefore described, and with the same intention, except that a much large- per cent of the dressed or finished lumber was sold and shipped to points within the State of Arkansas.

The rough material rates per 100 pounds established in Distance Tariff No. 3, from the woods to the mill, plus the rate per hundred pounds on the manufactured article from the mill to its destination, were substantially more than the through rates would be on
40 a shipment of the same manufactured articles from the woods to final destination on a continuous movement; if the rough material had been shipped from the woods to final destination of the finished product the cost of transportation would have been much greater, because of the greater weight and bulk of the rough material.

Since about the year 1898 similar rough material tariffs have been in force in Arkansas.

The Railroad Companies in due time filed exceptions to the allowance of each of said claims, and the claimants also filed exceptions in connection with said claims, raising a number of questions; but the only exceptions ruled on by the court and involved on this appeal were the following:

1. "That the movement of said rough material into the milling point, and the subsequent forwarding of the finished product to points beyond the State of Arkansas, constituted interstate commerce, and the rough material rates of the defendants are not applicable."

The Court sustained said exception as to the claims of J. F. Hasty and Sons, to which ruling said intervener excepted.

2. "That the provisions of Distance Tariff No. 3, Item 79, regulating rough material rates inbound, are in the alternative, and are also discriminatory against shippers who do not enter into contracts with the carrier with reference to the re-shipment of the specified percentages of the finished product."

The Court sustained said exception to the claims of the Arkadelphia Milling Company, to which ruling said intervener excepted.

As to the claims of the Arkadelphia Milling Company in which the evidence was similar to that on the other claims except
41 the interstate commerce feature, the Railway Companies filed no exceptions on the ground that the movement to the mill was interstate commerce. The only exception to said claims involved in this appeal was the second one above.

The following is one of the established rules of the District Court of the United States for the Eastern District of Arkansas, and it was in force at the time the injunction was issued herein and the injunction bonds given and has been continuously in force since then.

"Rule XIV. In all cases in which an injunction has been granted, and a bond executed by the complainants, damages sustained by the party enjoined, in case the injunction is dissolved, may be assessed in the same proceeding, either by the court or by reference to a Master, and judgment entered in the same action against the sureties on the bond; provided, however, that unless the damages are thus assessed in the cause, or a judgment entered that the party enjoined is entitled to no damages by reason of the improper granting of the injunction,

he may proceed on the bond in an action at law without any further order or leave of the Court."

Prior to the hearing the District Court entered an order consolidating the foregoing causes and interventions.

Witness our hands this 20th*n* day of November, 1916.

(Signed) ROSE, HEMINGWAY, CANTRELL, LOUGHBOROUGH & MILES,
By J. F. LOUGHBOROUGH,
Solicitor for all the Claimants.
JOHN M. MOORE AND
GEO. A. McCONNELL,
Solicitors for St. Louis, Iron Mountain & Southern Railway Company, and St. Louis Southwestern Railway Company.

42 The foregoing statement of the case is approved this 20th day of November, A. D. 1916.

(Signed) JACOB TRIEBER,
District Judge.

Endorsed: Filed November 20th, 1916. Sid. B. Redding, Clerk.

43 UNITED STATES OF AMERICA,
Eastern District of Arkansas, Western Division:

Be it remembered, That at a District Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the Sixteenth day of October Anno Domini, One Thousand, Nine Hundred and Sixteen at the United States Court Room, in the City of Little Rock, Arkansas, the Honorable Jacob Trieber Judge presiding and holding said Court, the following proceedings were had, to-wit: November 24th, 1916:

No. 1636.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas,

And

No. 1637.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas.

Comes the Intervener, The Arkadelphia Milling Company, by Rose, Hemingway, Cantrell, Loughborough and Miles, Esqs., its so-

licitors, and files herein its Assignment of Errors and Petition for Appeal, to the Supreme Court of the United States, which appeal is allowed, returnable in thirty (30) days, upon the execution of a bond in the sum of Five Hundred Dollars ($500.00); and comes said Intervener, and files herein its bond, with F. J. Schmutz as surety, which is approved by the Judge of this Court as sufficient; and said Intervener also files herein its directions as to the transcript on appeal, and notice of election to have the Clerk of this Court prepare the same for the Appellate Court; and said Intervener also files its Citation with service of the same duly accepted by Moore, Smith and Moore, Solicitors for the complainants herein.

44 Which Assignment of Errors and Prayer for Appeal is as follows:

In the United States District Court, Eastern District of Arkansas, Western Division.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants.

And

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants.

On the Intervention of the Arkadelphia Milling Company.

Prayer for Appeal and Assignment of Errors.

Considering itself aggrieved by the final decision of the district court on its intervention in the above entitled cause, the intervener, Arkadelphia Milling Company, hereby prays an appeal from the decision and decree on its intervention in the above entitled cause to the Supreme Court of the United States and the intervener assigns the following errors in the record and proceedings in said cause:

First. The Court erred in entering a final decree disallowing the claim and dismissing its intervention.

Second. The Court erred in its conclusion and decision that the rates on which the claim of the Arkadelphia Milling Company filed herein is based were void as being discriminatory.

45 Third. The Court erred in its conclusion and decision that there was an exception filed by the complainant to the report of the Master herein on the claim of the Arkadelphia Milling Com-

pany, on the ground that the rates promulgated by the Arkansas Railroad Commission, on which said claim was based, were void for discrimination against other shippers.

Fourth. The Court erred in its conclusion and decision that the rates on which the claim of the Arkadelphia Milling Company was based, were void, because the Supreme Court of Arkansas had held that they were applicable to shipments that this court deemed were movements in interstate commerce, and being so applicable, the rates were not separable and all the so-called rough material rates were void on this account.

Fifth. The Court erred in sustaining exception numbered two, to the claim of intervener, Arkadelphia Milling Company.

Wherefore, in order that the said intervener may obtain relief in the premises and have opportunity to show the errors complained of, it prays that it be allowed to appeal to the Supreme Court of the United States, and that the proper orders in reference to the security required of it be made; and that the aforesaid decree be reversed.

(Signed) ROSE, HEMINGWAY, CANTRELL, LOUGHBOROUGH & MILES,
By J. F. LOUGHBOROUGH,
Solicitors for Intervener.

Appeal to the Supreme Court of the United States, returnable in thirty (30) days, granted upon the execution of a bond in the sum of Five Hundred Dollars ($500.00) conditioned as required by law, to be approved by me.

(Signed) JACOB TRIEBER, *Judge.*

Endorsed: Filed Nov. 24th, 1916. Sid. B. Redding, Clerk.

46 In the District Court of the United States for the Eastern District of Arkansas, Western Division.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants.

And

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants.

Bond on Appeal.

Know all men by these presents:

That we, Arkadelphia Milling Company, as principal, and F. J. Schmutz, as surety, are held and firmly bound unto the St. Louis,

Iron Mountain and Southern Railway Company, and unto the St. Louis Southwestern Railway Company, in the full and just sum of Five Hundred Dollars ($500.00), to be paid to the said St. Louis, Iron Mountain and Southern Railway Company and to the said St. Louis Southwestern Railway Company, their respective successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and successors jointly and severally by these presents.

Sealed with our seals and dated this 24th day of November, 1916.

Whereas, lately, at the April Term, A. D. 1916, of this Court of the United States for the Western Division of the Eastern
47 District of Arkansas, in suits depending in said Court between the St. Louis, Iron Mountain and Southern Railway Company and George W. Bellamy, et al., as the Railroad Commission of Arkansas, and the St. Louis Southwestern Railway Company and the same named defendants, a decree was rendered against the intervention of the principal in ths obligation. It has obtained an appeal in the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said St. Louis, Iron Mountain and Southern Railway Company, and to the said St. Louis Southwestern Railway Company, citing and admonishing each of them to be and appear in the United States Supreme Court, in the City of Washington, District of Columbia, thirty (30) days from and after the date of said citation.

Now the condition of the above obligation is such that if said intervener shall prosecute said appeal to effect and answer all damages and costs, if its fails to make good its plea, then this obligation shall be void; else to remain in full force and effect.

(Signed) ARKADELPHIA MILLING COMPANY,
By J. F. LOUGHBOROUGH, *Its Solicitor,*
As Principal.
F. J. SCHMUTZ, *As Surety.*

Approved:

JACOB TRIEBER, *Judge.*

Endorsed: Filed Nov. 24th, 1916. Sid. B. Redding, Clerk.

48 In the United States District Court, Eastern District of Arkansas, Western Division.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants.

And

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants.

Directions to Clerk.

To the Clerk of Said Court:

On the appeal herein by intervener, Arkadelphia Milling Company, please incorporate in the transcript for the Supreme Court of the United States the statement of the case filed herein and approved by the Court.

(Signed) J. F. LOUGHBOROUGH,
Of Rose, Hemingway, Cantrell, Loughborough & Miles, Solicitors for Intervener.

We acknowledge service of a copy of the foregoing præcipe and consent that the record of appeal shall be made up as therein indicated.

(Signed) MOORE, SMITH & MOORE,
Solicitors for Complainants.

Endorsed: Filed Nov. 24th, 1916. Sid. B. Redding, Clerk.

49 In the United States District Court, Eastern District of Arkansas, Western Division.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants.

And

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants.

Directions for Printing Transcript.

Comes the intervener, Arkadelphia Milling Company, by its solicitors, and elects to have the Clerk of the District Court of the United States for the Eastern District of Arkansas prepare the transcript in this cause, and forward the same to the Clerk of the United States Supreme Court, to be there printed by and under the supervision of the Clerk of said Supreme Court.

(Signed) J. F. LOUGHBOROUGH,
Of Rose, Hemingway, Cantrell, Loughborough & Miles, Solicitors for Intervener.

Endorsed: Filed Nov. 24th, 1916. Sid. B. Redding, Clerk.

50 THE UNITED STATES OF AMERICA:

To St. Louis Southwestern Railway Company, and St. Louis, Iron Mountain and Southern Railway Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court, at the City of Washington, D. C., thirty days from and after the day this Citation bears date, pursuant to a- appeal, filed in the Clerk's office of the District Court of the United States for the Western Division of the Eastern District of Arkansas, wherein The Arkadelphia Milling Company, Intervenor, Appellant, and you are Appellees, to show cause, if any there be, why the judgment rendered against the said Appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Jacob Trieber, Judge of the District Court

of the United States for the Eastern District of Arkansas, this 24th day of November in the year of our Lord one thousand nine hundred and Sixteen.

JACOB TRIEBER,
United States District Judge for the Eastern District of Arkansas.

Service acknowledged November 24" 1916.
MOORE, SMITH & MOORE,
For Complainants.

Endorsed: Filed Nov. 24, 1916. Sid. B. Redding, Clerk.

51 UNITED STATES OF AMERICA,
Eastern District of Arkansas, Western Division:

Be it Remembered, That at a District Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the Sixteenth day of October, Anno Domini, One Thousand, Nine Hundred and Sixteen, at the United States Court Room, in the City of Little Rock, Arkansas, the Honorable Jacob Trieber, Judge presiding and holding said Court, the following proceedings were had, to-wit: on November 24th, 1916:

No. 1637.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas.

And

No. 1637.

ST. LOUIS, IRON MOUNTAIN AND SOUTERN RAILWAY COMPANY

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas.

Come the Interveners, J. F. Hasty and Sons, by Rose, Hemingway, Cantrell, Loughborough and Miles, Esqs., their solicitors, and file herein their Assignment of Errors and Petition for Appeal, to the Supreme Court of the United States, which appeal is allowed, returnable in thirty (30) days from this date, upon the execution of a bond in the sum of Five Hundred Dollars ($500.00); and come said Interveners and file herein their bond with F. J. Schmutz as surety, which is approved by the Judge of this Court as sufficient;

and said Interveners also file herein their directions to the Clerk as to the transcript on appeal and notice of election to have the Clerk of this Court prepare same for the Appellate Court; and said Interveners also file herein their Citation with service of the same duly accepted by Moore, Smith and Moore, Solicitors for the Complainants.

52 In the United States District Court, Eastern District of Arkansas, Western Division.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants.

And

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants.

On the Intervention of Joseph F. Hasty, Eliphalet F. Hasty, and William C. Hasty, Composing the Partnership of J. F. Hasty & Sons.

Prayer for Appeal and Assignment of Errors.

Considering themselves aggrieved by the final decision of the District Court on their intervention in the above entitled cause, the interveners, Joseph F. Hasty, Eliphalet F. Hasty and William C. Hasty, composing the partnership of J. F. Hasty & Sons, hereby pray an appeal from the decision and decree on their respective interventions in the above entitled cause to the Supreme Court of the United States, and the interveners assign the following errors in the record and proceedings in the said cause:

First. The Court erred in entering a final decree disallowing the claim and dismissing the intervention of this intervener.

53 Second. The Court erred in its decision that the movement of the shipments, on which the claim of J. F. Hasty & Sons was based, were movements in interstate commerce, and that the rates promulgated by the Arkansas Railroad Commission did not apply to such movements.

Third. The Court erred in sustaining the exception numbered one, filed by the complainants herein to the claim of interveners herein, J. F. Hasty & Sons.

Wherefore, In order that the said interveners may obtain relief

in the premises and have opportunity to show the errors complained of, they pray that they be allowed to appeal to the Supreme Court of the United States, and that the proper orders in reference to the security required of them be made, and that the aforesaid decree be reversed.

(Signed) ROSE, HEMINGWAY, CANTRELL, LOUGHBOROUGH & MILES,
By J. F. LOUGHBOROUGH,
Solicitors for Interveners.

Appeal to the Supreme Court of the United States, returnable in thirty (30) days, granted upon the execution of a bond in the sum of Five Hundred Dollars ($500.00) conditioned as required by law, to be approved by me.

(Signed) JACOB TRIEBER, *Judge.*

Endorsed: Filed Nov. 24th, 1916. Sid. B. Redding, Clerk.

54 In the United States District Court, Eastern District of Arkansas, Western Division.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants,

And

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants.

Bond on Appeal.

Know all men by these presents:

That we, Joseph F. Hasty, Eliphalet F. Hasty and William C. Hasty, composing the partnership of J. F. Hasty & Sons, as principals, and F. J. Schmutz, as surety, are held and firmly bound unto the St. Louis, Iron Mountain and Southern Railway Company, and unto the St. Louis Southwestern Railway Company, in the full and just sum of Five Hundred Dollars ($500.00) to be paid to the said St. Louis, Iron Mountain and Southern Railway Company, and to the said St. Louis Southwestern Railway Company, their respective successors and assigns, to which payment well and truly to be made

we bind ourselves, our heirs, executors and successors jointly and severally by these presents.

Sealed with our seals and dated this 24th day of November, 1916.

Whereas, lately, at the April Term, A. D. 1916, of this
55 Court of the United States for the Western Division of the Eastern District of Arkansas, in suits depending in said Court between the St. Louis, Iron Mountain & Southern Railway Company and George W. Bellamy, et al. as the Railroad Commission of Arkansas, and the St. Louis Southwestern Railway Company and the same named defendants, a decree was rendered against the intervention of the principals in this obligation. They have obtained an appeal in the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said St. Louis, Iron Mountain & Southern Railway Company and to the said St. Louis Southwestern Railway Company, citing and admonishing each of them to be and appear in the United States Supreme Court, in the City of Washington, District of Columbia, thirty (30) days from and after the date of said Citation.

Now, the condition of the above obligation is such that if said interveners shall prosecute said appeal to effect and answer all damages and costs, if they fail to make good their plea, then this obligation shall be void; else to remain in full force and effect.

(Signed) JOSEPH F. HASTY,
ELIPHALET F. HASTY,
WM. C. HASTY,
Composing J. F. Hasty & Sons.
By J. F. LOUGHBOROUGH, *Solicitor,*
As Principals.
F. J. SCHMUTZ, *as Surety.*

Approved:

JACOB TRIEBER, *Judge.*

Endorsed: Filed Nov. 24th, 1916. Sid. B. Redding, Clerk.

56 In the District Court of the United States for the Western Division of the Eastern District of Arkansas.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants.

And

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants.

Directions to Clerk.

To the Clerk of said Court:

On the appeal herein by interveners, Joseph F. Hasty, Eliphalet F. Hasty and William C. Hasty, composing the partnership of J. F. Hasty & Sons, please incorporate in the transcript for the Supreme Court of the United States the statement of the case filed herein and approved by the Court.

(Signed) J. F. LOUGHBOROUGH,
Of Rose, Hemingway, Cantrell, Loughborough & Miles, Solicitors for Interveners.

We acknowledge service of a copy of the foregoing præcipe and consent that the record of appeal shall be made up as therein indicated.

(Signed) MOORE, SMITH & MOORE,
Solicitors for Complainants.

Endorsed: Filed Nov. 24th, 1916. Sid. B. Redding, Clerk.

57 In the United States District Court, Eastern District of Arkansas, Western Division.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants,

And

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants.

Directions for Printing Transcript.

Come the interveners, J. F. Hasty & Sons, by their solicitors, and elect to have the Clerk of the District Court of the United States for the Eastern District of Arkansas prepare the transcript in this cause, and forward the same to the Clerk of the United States Supreme Court, to be there printed by and under the supervision of the Clerk of said Supreme Court.

(Signed) J. F. LOUGHBOROUGH,
Of Rose, Hemingway, Cantrell, Loughborough & Miles,
Solicitors for Interveners.

Endorsed: Filed Nov. 24th, 1916. Sid. B. Redding, Clerk.

58 THE UNITED STATES OF AMERICA:

To St. Louis Southwestern Railway Company and St. Louis, Iron Mountain and Southern Railway Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court at the City of Washington, D. C., thirty days from and after the day this Citation bears date, pursuant to an appeal, filed in the Clerk's office of the District Court of the United States for the Western Division of the Eastern District of Arkansas, wherein Joseph F. Hasty, Eliphalet F. Hasty and William C. Hasty, composing the partnership of J. F. Hasty and Sons, Intervenors, Appellants, and you are Appellees, to show cause, if any there be, why the judgment rendered against the said Appellants, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Jacob Trieber, Judge of the District

Court of the United States for the Eastern District of Arkansas, this 24th day of November in the year of our Lord one thousand nine hundred and Sixteen.

JACOB TRIEBER,
United States District Judge for the Eastern District of Arkansas.

Service acknowledged November 24" 1916.
MOORE, SMITH & MOORE,
For Complainants.

Endorsed: Filed Nov. 24, 1916. Sid. B. Redding, Clerk.

59 UNITED STATES OF AMERICA,
Eastern District of Arkansas,
Western Division:

Be it remembered, That at a District Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the Sixteenth day of October Anno Domini, One Thousand, Nine Hundred and Sixteen at the United States Court Room, in the City of Little Rock, Arkansas, the Honorable Jacob Trieber Judge presiding and holding said Court, the following proceedings were had, to-wit: on November 24th, 1916:

No. 1636.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
vs.
GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas,

And

No. 1637.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas.

Come the complainant, St. Louis, Iron Mountain and Southern Railway Company, and the United States Fidelity & Guaranty Company, the surety on the injunction bond herein, by Moore, Smith & Moore, Esqs., their solicitors, and file herein their Assignment of Errors and Petition for Appeal, to the Supreme Court of the United States, which appeal is allowed, returnable in thirty days from this date, upon the execution of a bond in the sum of Five Hundred Dollars ($500.00); and come said complainants and file herein their

bond, with E. J. Bodman as surety, which is approved by the Judge of this Court as sufficient; and said complainants also file herein their directions as to the transcript on appeal, and notice of election to have the Clerk of this Court prepare the transcript for the appellate court; and said complainants also file herein their Citation with service of the same duly accepted by J. F. Loughborough, Solicitor for the Southern Cotton Oil Company, Intervener.

60 In the United States District Court, Eastern District of Arkansas, Western Division.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants,

And

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants.

On the Intervention of the Southern Cotton Oil Company.

Prayer for Appeal and Assignment of Errors.

Considering themselves aggrieved by the final decision of the District Court on the intervention of the Southern Cotton Oil Company in the above entitled cause, the plaintiff, St. Louis, Iron Mountain and Southern Railway Company, and the United States Fidelity and Guaranty Company, the surety on the injunction bond filed in said original proceeding, each hereby pray an appeal from the decision and decree on said intervention in the above entitled cause to the United States Supreme Court and the complainant and the United States Fidelity and Guaranty Company assign the following errors in the record and proceedings in said cause:

61 First. The Court erred in entering a final decree overruling plaintiff's exceptions and sustaining the allowance made by the Master.

Second. The Court erred in rendering judgment in favor of the Southern Cotton Oil Company.

Third. The Court erred in holding the final decree entered in said original proceeding by the plaintiff against George W. Bellamy and others, Railroad Commissioners of the State of Arkansas, did not release the injunction bonds filed in said cause and discharge the plaintiff and the sureties on the injunction bond from all liability

on said bond by reason of the granting of said preliminary injunction.

Fourth. The Court erred in overruling exception No. 1, filed by plaintiff herein to the claim of the intervener herein, the Southern Cotton Oil Company.

Fifth. The Court erred in overruling plaintiff's exception to all such claims as accrued subsequent to the date the final decree in said original cause was entered, viz: the 11th day of May, 1911, which claims are embraced in the class designated by the Special Master as Series C, and in not holding that the injunction bonds filed by plaintiff ceased to be operative or to impose any liability on the part of the plaintiff or the sureties therein after the rendition of the final decree perpetuating said injunction.

Sixth. The Court erred in overruling exception No. 2, filed by the plaintiff herein to the claim of the intervener, the Southern Cotton Oil Company.

Seventh. The Court erred in allowing and rendering judgment for interest on said claims prior to the findings by the Master.

Eighth. The Court erred in allowing and rendering judgment for interest on any of said claims prior to the date at which the judgment in this proceeding was rendered.

62 Ninth. The Court erred in awarding costs in the respective interventions against the plaintiff.

(Signed) MOORE, SMITH & MOORE,
By J. M. MOORE,
Solicitors for Complainants and U. S. Fidelity and Guaranty Company.

Appeal to the Supreme Court of the United States, returnable in thirty (30) days, granted, upon the execution of a bond in the sum of Five Hundred Dollars ($500.00) conditioned as required by law, to be approved by me.

(Signed) JACOB TRIEBER, *Judge.*

Endorsed: Filed Nov. 24th, 1916. Sid. B. Redding, Clerk.

63 In the United States District Court, Eastern District of Arkansas, Western Division.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants,

And

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants.

Bond on Appeal.

Know all men by these presents:

That we, the St. Louis, Iron Mountain and Southern Railway Company and the United States Fidelity & Guaranty Company, as principals, and E. J. Bodman, as surety, are held and firmly bound unto the Southern Cotton Oil Company, in the full and just sum of Five Hundred Dollars ($500.00), to be paid to the said Southern Cotton Oil Company, its successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and successors, jointly and severally by these presents.

Sealed with our seals and dated this 24th day of November, 1916.

Whereas, lately, at the April Term, A. D. 1916, of this Court of the United States for the Western Division of the Eastern District of Arkansas, in suits pending in said Court between the St.
64 Louis, Iron Mountain and Southern Railway Company and George W. Bellamy, et al., as the Railroad Commission of Arkansas, and the St. Louis Southwestern Railway Company, and the same named defendants, a decree was rendered against the principals in this obligation. It has obtained an appeal in the said Court to reverse the decree in the aforesaid suit, and a Citation directed to the said Southern Cotton Oil Company, citing and admonishing it to be and appear in the United States Supreme Court in the City of Washington, District of Columbia, thirty (30) days from and after the date of said Citation.

Now, the condition of the above obligation is such that if said appellants shall prosecute said appeal to effect and answer all dam-

ages and costs, if they fail to make good their plea, then this obligation shall be void; else to remain in full force and virtue.

(Signed) ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
By J. M. MOORE, *Att'y;*
UNITED STATES FIDELITY & GUARANTY CO.,
By J. M. MOORE, *Att'y,*
As Principals.
E. J. BODMAN, *as Surety.*

Approved:
JACOB TRIEBER, *Judge.*

Endorsed: Filed Nov. 24th, 1916. Sid. B. Redding, Clerk.

65 UNITED STATES OF AMERICA,
Eastern District of Arkansas, Western Division:

Be it remembered, that at a District Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the Sixteenth day of October Anno Domini, One Thousand, Nine Hundred and Sixteen, at the United States Court Room, in the City of Little Rock, Arkansas, the Honorable Jacob Trieber, Judge presiding and holding said Court, the following proceedings were had, to wit: on November 24th, 1916:

No. 1636.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas,

And

No. 1637.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas.

Come the Complainant, St. Louis Southwestern Railway Company, and the United States Fidelity & Guaranty Company, the surety on the injunction bond herein, by Moore, Smith & Moore, Esqs., their solicitors, and file herein their Assignment of Errors and

Petition for Appeal, to the Supreme Court of the United States, which appeal is allowed, returnable in thirty days from this date, upon the execution of a bond in the sum of Five Hundred Dollars ($500.00) and come said complainants and file herein their bond, with E. J. Bodman as surety, which is approved by the Judge of this Court as sufficient and said complainants also file herein their directions as to the transcript on appeal, and notice of election to have the Clerk of this Court prepare the transcript for the appellate court and said complainants also file herein their Citation, with service of the same duly accepted by J. F. Loughborough, Solicitor for the Southern Cotton Oil Company, Intervener herein.

66 In the United States District Court, Eastern District of Arkansas, Western Division.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants,

And

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas.

On the Intervention of the Southern Cotton Oil Company.

Prayer for Appeal and Assignment of Errors.

Considering themselves aggrieved by the final decision of the District Court on the intervention of the Southern Cotton Oil Company in the above entitled cause, the plaintiff, St. Louis Southwestern Railway Company, and the United States Fidelity and Guaranty Company, the surety in the injunction bond filed in said original proceeding, each hereby pray an appeal from the decision and decree on said intervention in the above entitled cause to the United States Supreme Court, and the complainant and United States Fidelity and Guaranty Company assign the following errors in the record and proceedings in said cause:

First. The Court erred in entering a final decree overruling plaintiff's exceptions and sustaining the allowance made by the Master.

67 Second. The Court erred in rendering judgment in favor of the Southern Cotton Oil Company.

Third. The Court erred in holding the final decree entered in said original proceeding by the plaintiff against George W. Bellamy, and others, Railroad Commissioners of the State of Arkansas, did not release the injunction bonds filed in said cause and discharge the plaintiff and the sureties on the injunction bond from all liability on said bond by reason of the granting of said preliminary injunction.

Fourth. The Court erred in overruling exception No. 1 filed by plaintiff herein to the claim of the intervener herein, the Southern Cotton Oil Company.

Fifth. The Court erred in overruling plaintiff's exception to all such claims as accrued subsequent to the date the final decree in said original cause was entered, viz: the 11th day of May, 1911, which claims are embraced in the class designated by the Special Master as Series C, and in not holding that the injunction bonds filed by plaintiff ceased to be operative or to impose any liability on the part of the plaintiff or the sureties therein after the rendition of the final decree perpetuating said injunction.

Sixth. The Court erred in overruling exception No. 2 filed by the plaintiff herein to the claim of the intervener, the said Southern Cotton Oil Company.

Seventh. The Court erred in allowing and entering judgment for interest on said claims prior to the findings by the Master.

Eighth. The Court erred in allowing and rendering judg-
68 ment for interest on any of said claims prior to the date at which the judgment in this proceeding was rendered.

Ninth. The Court erred in awarding costs in the respective interventions against plaintiff.

(Signed) MOORE, SMITH & MOORE,
By J. M. MOORE,
Solicitors for Complainants and U. S. Fidelity & Guaranty Co.

Appeal to the Supreme Court of the United States, returnable in thirty (30) days, granted, upon the execution of a bond in the sum of Five Hundred Dollars ($500.00) conditioned as required by law, to be approved by me.

(Signed) JACOB TRIEBER, *Judge.*

Endorsed: Filed Nov. 24th, 1916. Sid. B. Redding, Clerk.

69 In the United States District Court, Eastern District of Arkansas, Western Division.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants,

And

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants.

Bond on Appeal.

Know all men by these presents:

That we, the St. Louis Southwestern Railway Company and the United States Fidelity & Guaranty Company, as principals, and E. J. Bodman, as surety, are held and firmly bound unto the Southern Cotton Oil Company in the full and just sum of Five Hundred Dollars ($500.00) to be paid to the said Southern Cotton Oil Company, its successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and successors, jointly and severally by these presents.

Sealed with our seals and dated this 24th day of November, 1916.

Whereas, lately, at the April Term, A. D. 1916, of this Court of the United States for the Western Division of the Eastern District of Arkansas, in suits pending in said Court between the St.
70 Louis, Iron Mountain and Southern Railway Company and George W. Bellamy, et al., as the Railroad Commission of Arkansas, and the St. Louis Southwestern Railway Company and the same named defendants, a decree was rendered against the principals in this obligation. It has obtained an appeal in the said Court to reverse the decree in the aforesaid suit, and a Citation directed to the said Southern Cotton Oil Company, citing and admonishing it to be and appear in the United States Supreme Court, in the City of Washington, District of Columbia, thirty (30) days from and after the date of said Citation.

Now the condition of the above obligation is such that if said appellants shall prosecute said appeal to effect and answer all dam-

ages and costs, if they fail to make good their plea, then this obligation shall be void; else to remain in full force and effect.

(Signed) ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
By J. M. MOORE, *Att'y;*
UNITED STATES FIDELITY & GUARANTY CO.,
By J. M. MOORE, *Att'y,*
As Principals.
E. J. BODMAN, *as Surety.*

Approved:
JACOB TRIEBER, *Judge.*

Endorsed: Filed Nov. 24th, 1916. Sid. B. Redding, Clerk.

71 In the United States District Court, Eastern District of Arkansas, Western Division.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants.

And

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants.

Directions to Clerk.

The Clerk of said Court:

On the appeal herein by the complainants and the United States Fidelity and Guaranty Company, please incorporate in the transcript for the United States Supreme Court, the statement of the case filed herein and approved by the Court.

(Signed) J. M. MOORE.
Solicitor for Complainants and United States Fidelity & Guaranty Co.

We acknowledge service of a copy of the foregoing praecipe and consent that the record of appeal shall be made up as therein indicated.

(Signed) J. F. LOUGHBOROUGH.
Solicitor for Intervener.

Endorsed: Filed Nov. 24th, 1916. Sid. B. Redding, Clerk.

72 In the United States District Court, Eastern District of Arkansas, Western Division.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants.

And

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants.

Directions for Printing Transcript.

Come the complainants and the United States Fidelity and Guaranty Company, by their solicitor, and elect to have the Clerk of the District Court of the United States for the Eastern District of Arkansas prepare the transcript in this cause, and forward the same to the Clerk of the United States Supreme Court, to be there printed by and under the supervision of the Clerk of said Supreme Court.

(Signed) J. M. MOORE.
Solicitor for Complainants and United States Fidelity & Guaranty Co.

Endorsed: Filed Nov. 24th, 1916. Sid. B. Redding, Clerk.

73 THE UNITED STATES OF AMERICA:

To the Southern Cotton Oil Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court at the City of Washington, D. C., thirty days from and after the day this Citation bears date, pursuant to a writ of error, filed in the Clerk's office of the District Court of the United States for the Western Division of the Eastern District of Arkansas, wherein St. Louis, Southwestern Railway Company and St. Louis, Iron Mountain and Southern Railway Company, and the United States Fidelity and Guaranty Company, Appellants, and you are Appellee, to show cause, if any there be, why the judgment rendered against the said Appellants, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Jacob Trieber, Judge of the District Court of the United States for the Eastern District of Arkansas, this 24th

day of November in the year of our Lord one thousand nine hundred and Sixteen.

JACOB TRIEBER,
United States District Judge for the Eastern District of Arkansas.

Service acknowledged November 24, 1916.
J. F. LOUGHBOROUGH,
For Defendants in —.

Endorsed: Filed Nov. 24, 1916. Sid. B. Redding, Clerk.

74 In the United States District Court, Eastern District of Arkansas, Western Division.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas, Defendants.

And

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff,

vs.

GEORGE W. BELLAMY et al., as the Railroad Commission of the State of Arkansas.

Stipulation.

We agree that one transcript may be made by the Clerk to the Court of Appeals on each of the appeals herein from the judgment rendered in this Court on June 14th, 1916, of each of complainants and each of interveners, J. F. Hasty & Sons and Arkadelphia Milling Company, and one transcript for each of the appeals to the Supreme Court.

(Signed) J. F. LOUGHBOROUGH,
For said Interveners.
J. M. MOORE,
For Each of Complainants.

Endorsed: Filed Nov. 24th, 1916. Sid. B. Redding, Clerk.

75 UNITED STATES OF AMERICA,
Eastern District of Arkansas, Western Division:

I, Sid. B. Redding, Clerk of the District Court of the United States for the Western Division of the Eastern District of Arkansas, hereby

certify that the foregoing writings annexed to this certificate are true, correct and compared copies of the originals remaining of record in my office at Little Rock, Arkansas, Assignments of Errors, and all proceedings in the cases of St. Louis, Iron Mountain and Southern Railway Company vs. George W. Bellamy, et al., as the Railroad Commission of the State of Arkansas, and St. Louis Southwestern Railway Company vs. George W. Bellamy, et al., as the Railroad Commission of the State of Arkansas, on the Appeal of the Arkadelphia Milling Company, J. F. Hasty & Sons, St. Louis, Iron Mountain and Southern Railway Company and St. Louis Southwestern Railway Company, as per the praecipe on file and of record in said causes.

In witness whereof, I hereunto set my hand and the seal of said Court, this Ninth day of December, in the year of our Lord, One Thousand Nine Hundred and Sixteen, and of the Independence of the United States of America, the one hundred and Forty-first.

Attest:

[The Seal of the District Court of East. Dist. Ark., Western Division, U. S. A.]

SID. B. REDDING,
Clerk U. S. District Court.

Endorsed on cover: File No. 25,675. E. Arkansas D. C. U. S. Term No. 845. The Arkadelphia Milling Company, appellant, vs. St. Louis Southwestern Railway Company and St. Louis, Iron Mountain & Southern Railway Company. File No. 25,676. Term No. 846. Joseph F. Hasty, Eliphalet F. Hasty, and William C. Hasty, composing the partnership of J. F. Hasty & Sons, appellants, vs. St. Louis Southwestern Railway Company and St. Louis, Iron Mountain & Southern Railway Company. File No. 25,677. Term No. 847. St. Louis, Iron Mountain & Southern Railway Company et al., appellants, vs. The Southern Cotton Oil Company. File No. 25,678. Term No. 848. St. Louis Southwestern Railway Company et al., appellants, vs. The Southern Cotton Oil Company. Filed January 5th, 1917. File Nos. 25,675-6-7 & 8.

Office Supreme Court, U. S.
FILED
APR 11 1918
JAMES D. MAHER,
CLERK.

8.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. [redacted]95

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY ET AL., APPELLANTS,

vs.

THE SOUTHERN COTTON OIL COMPANY, APPELLEE.

STIPULATION AS TO MOTION TO DISMISS.

We agree that the respective motions to dismiss for want of jurisdiction and respective briefs in each of the cases No. 353, the Arkadelphia Milling Company, Appellant, *vs.* St. Louis Southwestern Railway Company and St. Louis, Iron Mountain & Southern Railway Company; No. 351, Joseph F. Hasty, Eliphalet F. Hasty, and William C. Hasty,

composing the partnership of J. F. Hasty & Sons, Appellants, *vs.* St. Louis Southwestern Railway Company and St. Louis, Iron Mountain & Southern Railway Company; and No. 355, St. Louis, Iron Mountain & Southern Railway Company *et al.*, Appellants, *vs.* The Southern Cotton Oil Company, shall be filed and considered by the Court as made in this case.

J. M. MOORE,
For Appellant.

J. F. LOUGHBOROUGH,
For Appellee.

[Endorsed:] File No. 25,678. Supreme Court U. S. October term, 1917. Term No. 356. St. Louis Southwestern Railway Co. et al., Appellants, *vs.* The Southern Cotton Oil Company. Stipulation that motions to dismiss in cases Nos. 353, 354 and 355 shall be filed and considered by the Court as made in this case. Filed April 11, 1918.

INDEX.

	Page
Statement of facts	1
Order discharging bonds and releasing sureties	3
Order of consolidation	6
CASES SOUTHERN COTTON OIL COMPANY NUMBERED 94 AND 95	7
Exceptions to master's report	7
Assignment of errors	8
Argument for Appellants (Railway Companies)	10
Proceedings based on injunction bonds	10
Rule 15 of District Court	10
Bond became inoperative after final decree	11
Houghton v. Meyers, 208 U. S.	11
St. L., I. M. & S. Ry. v. McKnight, 244 U. S.	11
Bonds released by decree of May 11, 1911	11
Distinguish between these cases and McKnight case	12
Power of court to release bond	13
Russell v. Farley, 105 U. S.	13
Houghton v. Meyer, 208 U. S., distinguished from cases at bar	14
Reasonableness of rates and right of plaintiffs to injunction was never determined	14
N. C. & St. L. Ry. Co. v. Railroad Commission, 171 Fed.	17
So. Ry. Co. v. Railroad Commission, 196 Fed.	17
1 Spelling on Injunctions	17

N. Y. W. S. etc. R. Co. v. Omorod, 39 Hun 17
Hall v. Sexton, 3 N. Y. S. 18
Decree vacating bonds not appealed from 19
Mutual Life Insurance Co. v. Hill, 319 U. S. 19
In re Sanford Fork & Tool Co., 160 U. S. 19
Gaines v. Rudd, 148 U. S. 19
In re Potts, 166 U. S. 19
APPEALS OF ARKADELPHIA MILLING CO. AND J. F. HASTY & SONS, NOS. 92 OR 93 20
Exceptions by Railway Companies to master's report 20
Statement of facts in connection with rough material rates 21
Items 40 and 41 of Commission Tariff, prescribing maximum local rates 21
Item 79, prescribing alternative rates 21
Statement as to movement of rough material from woods to mills 23
Statement showing intention of shippers to transport rough material products to other states 24
Rates charged Appellants on rough material lower than maximum local rates provided in Commission Tariff 25, 26
Argument for Appellees (Railway Companies) 27
Opinion of District Court 27
Rough material rates void on grounds of discrimination 29
Lake Shore & Michigan Southern Ry. Co. v. Smith, 173 U. S. 29

Lake Shore etc. Ry. Co. v. Ohio, 173 U. S. 30
Penn. R. R. Co. v. Towers, 245 U. S. 30
21 I. C. C. 31
Cotting v. K. C. Stock Yards, 26 U. S. 33
Rough material rates apply to interstate shipments and void 34
T. & N. O. Ry. Co. v. Sabine Tram Co., 227 U. S. 37
Ohio Railway Co. v. Worthington, 229 U. S. 39
Swift & Co. U. S., 296 U. S. 41
Penna. Railway Co. v. Coal Co., 238 U. S. 41
Lust v. Atkinson, 186 S. W. 42
Reply to certain of claimant's contentions 46
Order discharging bonds 46
Restitution 46
Exception on discrimination 47
Maximum local rates presumed to be reasonable 49
Void on other grounds 50
Review of decisions on state taxing power 50

IN THE

Supreme Court of the United States

OCTOBER TERM, 1918.

THE ARKADELPHIA MILLING COMPANY

v. No. 92.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY AND ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.

JOSEPH F. HASTY, ELIPHALET F. HASTY, AND WILLIAM C. HASTY, COMPOSING THE PARTNERSHIP OF J. F. HASTY & SONS, APPELLANTS,

v. No. 93.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY AND ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, *et al.*, APPELLANTS,

v. No. 94.

THE SOUTHERN COTTON OIL COMPANY.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY *et al.*, APPELLANTS,

v. No. 95.

THE SOUTHERN COTTON OIL COMPANY.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE EASTERN DISTRICT OF ARKANSAS.

BRIEF ON BEHALF OF THE
ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY

AND

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY.

STATEMENT.

On June 15, 1908, the Railroad Commission of the State of Arkansas promulgated Standard Freight Distance Tariff No. 3, prescribing maximum rates on all classes and commodities of intrastate freight on all railroads operated in the state. On July 18, 1908, the St.

Louis, Iron Mountain & Southern Railway Company and the St. Louis Southwestern Railway Company, respectively, brought suit in the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas to enjoin said rates on the ground that they were confiscatory. Temporary injunctions were granted in both cases on September 3, 1908, and an injunction bond in the sum of $200,000 was filed with the United States Fidelity & Guaranty Company as surety, in each case. Copies of the order of injunction and bond in each case are printed at pages 6 and 7 of the record. A further bond in the sum of $500,000 on the part of the St. Louis, Iron Mountain & Southern Railway Company, and the sum of $300,000 by the St. Louis Southwestern Railway Company, without sureties, was filed under orders of June 23, 1909 (Rec. 9, 10). On May 11, 1911, a final decree was entered in each case sustaining the allegations of the bill and perpetually enjoining the enforcement of the commission's rates (Rec. 11, 12). Each of the decrees contained the following order: "It is further ordered that the bond for injunction filed by the complainant herein be released and the sureties thereon discharged from liability" (Rec. 12). Appeals were taken from these decrees to the Supreme Court. The cases were heard together and the decrees of the Circuit Court reversed on the 16th day of June, 1913. (See Allen v. St. Louis, Iron

Mountain & So. Ry. Co., 230 U. S. 553.) Mandates from the Supreme Court were filed in the District Court on July 18, 1913, and on the same day a decree was entered in each case, in obedience to the mandate, dismissing the case without prejudice, and appointing a special master to state an account of damages sustained by the granting of the temporary and permanent injunctions. The decree directed the master to report separately all claims which arose under the first temporary injunction granted by Circuit Judge Van Devanter (covering the period between the 3d day of September, 1908, and July 5, 1909), all claims that arose under the bonds executed in pursuance of the order made by the District Judge (covering the period from September 5, 1909, to May 11, 1911), and all that arose after the rendition of the final decree on May 11, 1911 (Rec. 12-15).

On December 21, 1914, the special master filed his report in each case, showing in detail the claims filed, those allowed and those disallowed during the three separate periods directed by the decree, in three series, designated as A, B and C. A and B apply to all claims that accrued prior to the entering of the final decree, and those in Series C to all that accrued after the final decree was entered.

It is unnecessary to distinguish between Series A and B, as they cover practically the same class of

claims, all of them having accrued while the temporary injunctions and injunction bonds were in force, but they are distinguishable from Series C in that the latter accrued subsequent to the final decree, and after the injunction bonds had ceased to be effective.

The following claims were allowed by the special master, namely:

Southern Cotton Oil Company

Against St. Louis, Iron Mountain & Southern Railway Company:

Series A and B	$19,072.30
Series C	13,000.63

Against St. Louis Southwestern Railway Company:

Series A and B	$2,551.53
Series C	2,210.64

J. F. Hasty & Sons

Against St. Louis, Iron Mountain & Southern Railway Company:

Series A and B	$7,077.21
Series C	9,259.12

Against St. Louis Southwestern Railway Company:

Series A and B	$ 696.39
Series C	384.02

Arkadelphia Milling Company

Against St. Louis, Iron Mountain & Southern Railway Company:

Series A and B	$7,644.96
Series C	2,175.46

Said allowances were based on the difference between the rates collected while the injunction was in force and those provided in the commission tariff (Rec. 15-17).

The court at the hearing of said causes by consent of all the parties ordered that all of the claims be consolidated for trial on any appeal that might be taken, and it was stipulated by counsel that one transcript might be made by the clerk in all the cases (Rec. 2, 48).

WE WILL FIRST TAKE UP THE TWO LATER NUMBERED CASES (NOS. 94 AND 95), INVOLVING APPEALS BY THE RAILWAY AND GUARANTY COMPANIES FROM THE DECREES IN FAVOR OF THE SOUTHERN COTTON OIL COMPANY.

On the coming in of the master's report the following exceptions were filed by each of the plaintiffs (Railroad Companies) to the allowance of the claim of the Southern Cotton Oil Company, namely:

Exception No. 1. Because in the final decree entered in said cause on the 11th day of May, 1911, it was ordered and decreed that the injunction bond filed by complainant in said cause be discharged and the makers thereof released from liability, the effect of which order was to relieve complainant and the sureties on said bond from all liability by reason of the granting of said preliminary injunction, as well as by reason of the final decree entered in said cause perpetuating said injunction.

Exception No. 2. As to all such claims for overcharges as accrued subsequent to the date that the final decree in said cause was entered, viz., the 11th day of May, 1911, which are embraced in the class of claims designated by the special master as Series C, and to the finding and allowance made by the special master

in connection with said claims, complainant excepts on the ground that at and after the rendition of the final decree in said cause the injunction bonds filed by complainant ceased to be operative, or to create any further liability on the part of the complainant or the sureties therein, and complainant incurred no liability to said claimants or any of them under said final decree perpetuating said injunction, the same having been based on a final hearing and determination by the court of the issues involved in said cause, constituted a final adjudication thereof.

The exceptions in each case were overruled and judgment rendered in favor of the claimants against the complainant and the United States Fidelity & Guaranty Company, the surety on the injunction bonds (Rec. 16, 3).

The plaintiffs and the guaranty company filed their prayers for appeal and assignments of errors (Rec. 39, 43).

The following errors were assigned in each case:

First. The court erred in overruling plaintiff's exceptions and sustaining the allowance made by the master.

Second. In rendering judgment in favor of the Southern Cotton Oil Company.

Third. In holding that the final decree entered in the original case did not release the injunction bonds filed in said case, and discharge the plaintiff and the surety on the injunction bond from liability on said bonds by reason of the granting of the preliminary injunction.

Fourth. In overruling plaintiff's Exception No. 1.

Fifth. In overruling plaintiff's exception to all such claims as accrued subsequent to the date of the final decree in the original case, entered the 11th day of May, 1911, which claims are embraced in Series C, and in not holding that the injunction bonds filed by the plaintiff ceased to be operative, or to impose any liability on the plaintiff or the surety therein, after the rendition of the final decree perpetuating the injunction.

Sixth. In overruling Exception No. 2 filed by the plaintiff to the allowance of said claim.

Seventh. In allowing and entering judgment for interest on said claims prior to the findings by the master.

Eighth. In allowing and rendering judgment for interest on any of said claims prior to the date at which the judgment in this proceeding was rendered.

Ninth. In awarding costs in the respective interventions against the plaintiff (Rec. 39, 43).

ARGUMENT FOR APPELLANTS, RAILWAY AND GUARANTY COMPANIES.

These proceedings are founded on the injunction bonds. The order of reference recited that it was made under Rule 15 of the District Court. The following is a copy of the rule:

"In all cases in which an injunction has been granted, and a bond executed by the complainants, damages sustained by the party enjoined, in case the injunction is dissolved, may be assessed in the same proceeding, either by the court or by reference to a master, and judgment entered in the same action against the sureties on the bond; provided, however, that unless the damages are thus assessed in the cause, or a judgment entered that the party enjoined is entitled to no damages by reason of the improper granting of the injunction, he may proceed on the bond in an action at law without any further order or leave of the court" (Rec. 25-6).

The rule relates alone to damages recoverable on injunction bonds, and they are the only foundation for the decrees rendered against the United States Fidelity & Guaranty Company, the surety on the bonds.

I.

The bonds given for the temporary injunction became inoperative at the time of the entering of the final decree, making the injunction permanent, May 11, 1911, and no damage accruing after that date was recoverable on the bonds.

This covers all the claims included in Series C of the master's reports.

Houghton v. Meyer, 208 U. S. 149.

St. L., I. M. & S. Ry. Co. v. McKnight, 244 U. S. 368, 374.

In the case last cited, this court, referring to the final decrees in these cases, said:

"Damages arising between May 11, 1911 (the date of the decree granting the permanent injunction) and July 18, 1913 (the date of the decree on mandate dismissing the bill) were not recoverable on the injunction bond," citing Houghton v. Meyers, *supra*.

II.

Claims reported under Series A and B accrued while the temporary injunctions were in force. We contend that under the provisions of the decree of May 11, 1911, the bonds were released. The decrees respectively provided: "It is further ordered that the bond for injunction filed by the complainant herein be re-

leased and the surety thereon discharged from liability." The ruling in St. L., I. M. & So. Ry. v. McKnight, *supra,* does not sustain the contention that the order was inoperative as to liability on the bond. In that case the right of the shipper to sue at common law was involved, and it was held that the common law right to sue was not destroyed by the injunctions, but simply suspended. The suit was brought to restrain the defendants from prosecuting independent actions at law on the ground that the District Court, having taken jurisdiction for the purpose of assessing damages growing out of the granting of the injunction, its jurisdiction was exclusive, and the only remedy of the shippers was by filing their claims before the master. The court at page 374 of the opinion said:

"* * * The decree of May 11, 1911, expressly released the Railway Company and sureties from further liability on the bonds. It is contended by the Railway Company that the effect of the decree entered by the District Court is to deprive shippers and travelers of all remedy under the bond. But Gallup makes no claim under the bond. He sues on causes of action to recover overcharges arising under the Arkansas statutes. Gallup did not in fact become a party to the suit in the District Court; and he could not, after the mandate directed dismissal of the bill, be compelled to submit to that court the adjudication of his claim."

In the cases at bar the claims were made under the bonds, and raise the question as to the effect of the order on the liability created by the bonds.

The power of the court to release the bond, or other security, given as a condition of the issuance of a temporary injunction, was discussed at some length by Justice Bradley in *Russell* v. *Farley*, 105 U. S. 433. The court held that where no security is required the court has no power to award damages sustained in consequence of the injunction, except by making such a decree with reference to the costs of the suit as it may deem just. That to prevent any injustice that might result from the improvident issuance of an injunction the court may in the exercise of its discretion impose as a condition upon the plaintiff that it file a bond, make a deposit or provide other security for the plaintiff's protection. That since the imposition of terms is within the discretion of the court it follows that it has the further power to mitigate, or relieve altogether from, the terms imposed; that the power to impose the condition implies the power to relieve against it, and if it appear that the suit was brought in good faith it is within the discretion of the court to release the security.

In that case the appeal was from a decree that the appellant was not entitled to damages; and, in response to appellant's contention that if the lower court had the

power to remit damages its decision was erroneous, this court held that the judgment approached so near to an exercise of discretion that it would require a very clear case to induce the court to reverse its judgment. (P. 446.)

In Houghton v. Meyer, 208 U. S. 149, this court affirmed the judgment of the Court of Appeals of the District of Columbia reversing the judgment of the District Supreme Court refusing to assess damages on the injunction bond, on the ground that there was no doubt as to the rights of the parties, and distinguished the case in that respect from Russell v. Farley. It is not necessary to review the facts upon which the court based its conclusions in those cases as the court is doubtless familiar with them. The view taken in both the cases was that where a proceeding was prosecuted in good faith and the rights of the parties left in doubt it was open to the court that granted the injunction to exercise its discretion in relieving the party obtaining the injunction from damages.

The record in this case shows that the rights of the parties was left in doubt at the end of the litigation. The decree of the lower court was not reversed on the ground that the rates complained of were found to be reasonable and the allegations of the bill untrue. This court held that the mode of proof adopted was erroneous and directed that the case be dismissed with-

out prejudice, thus leaving the question open, to be relitigated if claimants should elect to do so. The record also shows that the lower court, during the progress of the case investigated the rates prescribed in the Commission Tariff and those put in by the railroad companies after the commission's rates had been enjoined, on motion to modify the temporary injunction, on the ground that plaintiff had put in unreasonable rates. A large amount of evidence was taken in regard to the reasonableness of the rates, involving the Commission Tariff as well as the voluntary tariff of the railroads, and an order was entered authorizing the railroad companies to charge freight rates that would produce a net increase of 33⅓ per cent on the revenues produced by the Commission Tariff, which rate was put in force on the 7th day of June, 1909, and continued until the final dissolution of the injunction (Rec. 8, 9). In view of the investigation and order made by the court during the pendency of the suit, of the final decree sustaining the allegations of the bill, and of the order of this court directing that the case be dismissed without prejudice, we submit that it can not be said that the result of the litigation left no doubt as to the rights of the parties or the right of defendants to avail themselves of the security given by the railroad company.

Referring again to the case of *Houghton* v. *Meyers,* which is relied on by appellees on this proposition, the case was before the Court of Appeals of the District of Columbia and this court twice. It was heard and decided on its merits, and this court said in concluding the opinion disapproving the judgment of the Supreme Court of the District refusing to enforce the injunction bond, that the result of the litigation left *no doubt* as to the rights of the parties, and of the government to avail itself of the bond, and for that reason held there was no room for the application of the doctrine laid down in Russell v. Farley. In the cases now before the court there was never a hearing on the merits or a determination of the rights of the parties.

The condition of the bonds in these cases was that if it should be eventually decided that the order inhibiting the enforcement of the commission rates should not have been made the complainant would refund, etc. That eventuality never arose. On the contrary, the decision of the trial court on the interlocutory proceeding in which the rates were investigated, and in the final decree rendered by the District Court, constituted a finding that the injunction was properly issued and the mere fact of the dissolution of the injunction and dismissal of the bill without prejudice pursuant to the mandate of this court was not a decision that the in-

junction should not have been granted. This court did not go into the details of the evidence or express an opinion as to the merits of the case, and obviously directed the lower court to dismiss the bills without prejudice for the purpose of leaving the questions involved open and undisposed of.

In the cases of N. C. & St. L. R. R. Co. v. Railroad Commission, 171 Fed. 223, and So. Ry. Co. v. Railroad Commission, 196 Fed. 558, in which the bonds were conditioned that in case the injunction was wrongfully issued complainants should pay all damages, etc., the District Court held that although the litigation was abandoned, the injunction was not dissolved as wrongfully issued, or on the ground that the rates should not have been enjoined, and that by the terms of the bond no liability could arise until the happening of one of these events.

It is stated in I Spelling on Injunctions and other Extraordinary Remedies, section 956, that:

"If an injunction is properly granted, no damages can be recovered by the party enjoined, although the suit was afterwards discontinued by the plaintiff, or although the Court of Appeals decided the suit against the plaintiff."

In New York, West Shore, etc., R. Co. v. Omorod, 29 Hun 274, the court said:

"It appears from the papers before us that the proceedings by which the plaintiff acquired the title to the lands were reversed by the Court of Appeals, but that is by no means a determination that the plaintiff was not entitled to the injunction at the time it was issued. (Methodist Churches v. Barker, 18 N. Y. 465). Such reversal may have been for irregularities without affecting the merits. It does not appear to us it was not so, and the burden rested upon the defendant to show it. No damage can be awarded or assessed unless the court finally decides that the plaintiff was not entitled to the injunction at the time it was issued. (Benedict v. Benedict, 15 Hun. 306; Weeks v. Southwick, 12 How. 170; Shearman v. New York Central Mills, 11 How. 269; Palmer v. Farley, 71 N. Y. 106)."

And in Hall v. Sexton, 3 N. Y. S. 549, the Superior Court of New York City, in rejecting a claim for damages in a case in which it appeared that after the trial court had affirmed an order of injunction the plaintiff had discontinued his action, said that the defendant was not entitled to damages in the absence of a determination by the court that the plaintiff was not entitled to the injunction at the time it was issued, and closed its opinion with these words: "It is not enough that the plaintiff has discontinued the action."

The decrees of the District Court specifically vacated the bonds and discharged the sureties. The parts of the decrees vacating the bonds and releasing the sureties were not appealed from. No error was assigned on that ground in connection with the prayers for appeal (Rec. in Main case, vol. 3, p. 2650), and the action of the court was not presented or passed on by this court. The rule is that a judgment of reversal is not necessarily an adjudication by the appellate court of any other than the questions in terms discussed and decided, and the court will consult the records and the opinion delivered by it at the time of entering its judgment to ascertain what was decided.

Mutual Life Ins. Co. v. Hill, 193 U. S. 551, 552.

In re Sanford Fork & Tool Co., 160 U. S. 247, 256, 258.

Gaines v. Rudd, 148 U. S. 228, 240.

In re Potts, 166 U. S. 263, 266.

The fact that the District Court mistakenly assumed upon the remanding of these cases that it was its duty to ascertain and assess damages does not strengthen appellee's position. That court had no jurisdiction or authority to order an assessment of damages at that time. The matter had passed beyond its control.

APPEALS OF ARKADELPHIA MILLING COMPANY, NO. 92, AND OF J. F. HASTY & SONS, NO. 93.

The claims of the appellants and allowances made by the master were based on the difference between the rates charged while the injunction was in force, and the rates provided in the Commission Tariff on the movement of rough material from the woods into milling points.

The railroad companies respectively excepted to the allowance by the master in favor of J. F. Hasty & Sons on the ground that the movement of rough material into the milling point, and the subsequent forwarding of the finished product to points out of the State of Arkansas constituted interstate commerce, and the rough material rates prescribed by the State Tariff were not applicable. This exception was not made and did not apply to the claim of the Arkadelphia Milling Company.

Each of the railroad companies excepted to the allowance in favor of each appellant on the ground that the provisions of the commission tariff regulating rough material rates into milling points were in the alternative, and were discriminatory against shippers who did not enter into contracts with the carrier for the

reshipment of certain specified percentages of the finished product.

The court sustained the appellees' exceptions on both grounds and disallowed appellants' claims, from which ruling these appeals are prosecuted.

The shipments on which said claims are based were bolts, staves, headings and rough lumber from the woods to the mills of the respective appellants (Rec. 23).

The maximum rates on lumber and stave bolts are contained in Item No. 40 (Rec. 19, 20). The maximum rates on staves and headings appear in Item 41 (Rec. 22-3).

Item 79 of the tariff designated "Rough Material Rates," printed at page 17 of the record, prescribes lower rates on all the commodities referred to than those contained in Items 40 and 41, conditioned upon the finished produce being reshipped over the same lines in certain proportions set out in the following paragraphs which follow the table of rates in Item 79:

"b. The above named rates are conditional upon the manufactured product being reshipped over the same line bringing in the rough material, and may be only used subject to the following conditions: The proportion of the tonnage of outbound manufactured

product to the tonnage of in-bound rough material shall not be less than the following'' (here follows the table of percents).

''c. The rates named above are intended to be used as rough material rates only, and carriers will be allowed by the commission to require consignees desiring to avail themselves of the benefit of same to enter into a suitable contract with reference to the reshipment of the specified percentage of the finished product; provided, the terms of said contract must be satisfactory to and approved by the commission; provided, further, that in no case shall the contract provide a higher rate on in-bound shipments than outlined in the above table'' (Rec. 17, 18).

Following, on page 18, the record contains these statements:

''That the aforesaid claimants (appellants) shipped over the line of railroad that brought in the rough material the requisite percentages of manufactured product named in said item 79 of the said tariff, in the usual course of business as hereinafter described.

''That said tariff also carried other schedules of rates applicable to the movement of the same commodities as those covered by the above claims where there was to be no reshipment of the in-bound rough material in its finished state from the mill, said rates being

known as the flat or local rates and are covered by Items 40 and 41, which are as follows.''

The following statement taken from the record shows how rough material was moved and handled from the woods into milling points and converted into finished product and shipped to markets out of the state:

''In the woods, trees would be cut down and sawed into lengths, and these lengths would be split into quarters or a less fraction of the piece. 'Bolts' were the parts into which a length or cut was split, from which several barrel staves, or pieces of barrel heading or hoops could be made; 'rough staves' or 'rough heading' were pieces of the size from which but one stave or piece of heading could be made. Some of the shippers whose claims are involved manufactured their rough material only into staves, some only into headings or hoops and some into more than one of such parts. When the rough material reached the mills, it was manufactured into finished staves, headings and hoops, and in this condition shipped to whoever purchased them. The purchaser uses them in making barrels, casks, etc. The wastings in the finishing of said articles from the rough material were either disposed of for firewood, or destroyed. When the rough material left the woods, a bill of lading was issued from

the woods to the mill. When the rough material reached the mill, it was finished into some or all of the articles described, when it was stacked in the yards or placed in kilns to dry. The process of manufacturing and drying occupied several months, or on an average this process would be gone through with, the finished products sold and shipped to the purchaser in about five months from the date the rough material was received at the mill. The claimants classified the different parts after they came from the mill completely finished and made sales from such stock. The markets for the manufactured articles were almost altogether in other states than Arkansas, or in foreign countries, and about 95 per cent of the sales of finished articles, that is, of the total out-bound shipments, were made for delivery at points outside the State of Arkansas, the remaining 5 per cent being sold and delivered, or shipped to points within the State of Arkansas. At the time the rough material was shipped to the mills, the mills did not know to whom they would sell the finished product, or to what points it would be shipped, but did know that there was little market for the finished articles in the State of Arkansas, and expected that they would sell 95 per cent of the said finished articles and ship them to points outside of the State of Arkansas.

"It was the intention of all the claimants herein at the time they shipped the rough material into the

milling points to mill said rough material with the object of selling the said finished product and shipping it out as soon as practical and all of them knew and intended at the time they brought the rough materials into the mill on account of previous course of dealings in the business, that 95 per cent of the finished product would be by them shipped to points outside the State of Arkansas.

"The claimants paid the usual property tax to the State of Arkansas on their stock of materials on hand at the milling point, whether said stock was in the rough or finished, the amount of the tax being arrived at according to the methods in use in the State of Arkansas by the use of an average basis.

"The rates charged on the rough material from the woods to the mill while Standard Distance Tariff No. 3 was suspended by the injunction herein were lower than the local rates named in that tariff, but were greater than the rough material rates named in that tariff.

"On the shipment of the out-bound product from the mill to its destination the freight rates charged were the regular rates in force at the time on these commodities between the points of shipment and the shipments were forwarded on the ordinary waybills between these points.

"As to the part of the claim of the Arkadelphia Milling Company that was based on rough lumber shipped to their mill, the rough lumber was manufactured into dressed lumber, stored in their yards, and later sold and shipped to whoever purchased it, in the same manner as was done with bolts and staves in the stave business as hereinbefore described, and with the same intention, except that a much larger per cent of the dressed or finished lumber was sold and shipped to points within the State of Arkansas.

"The rough material rates per 100 pounds established in Distance Tariff No. 3, from the woods to the mill, plus the rate per 100 pounds on the manufactured article from the mill to its destination, were substantially more than the through rates would be on a shipment of the same manufactured articles from the woods to final destination on a continuous movement; if the rough material had been shipped from the woods to final destination of the finished product the cost of transportation would have been much greater, because of the greater weight and bulk of the rough material."

Since about the year 1898 similar rough material tariffs have been in force in Arkansas."

The rates charged appellants on the rough material from the woods to the mill were lower than the maximum local rates contained in the commission tariff,

but greater than the rough material rates in said tariff. And it is for this difference that the claims for refunds are made by appellants.

ARGUMENT FOR APPELLEES (RAILWAY COMPANIES).

The following announcement made orally by the court from the bench at the time these interventions were disposed of state the questions, and the grounds upon which the court placed its rulings, so clearly that we can not do better than to insert it as a part of our argument. The court said:

This question was before this court in St. Louis Southwestern Railroad Company against the State Board of Railroad Commissioners of the State of Arkansas, in a proceeding to enjoin the commission from enforcing this rule. That case, which was an application for a temporary injunction against the State Board of Railroad Commissioners, was heard by three judges, Hon. Walter I. Smith, Circuit Judge; Hon. F. A. Youmans, District Judge for the Western District of Arkansas, and the Judge of this Court. In that case, after careful consideration, the three judges reached the unanimous conclusion that this order of the commission Item 79, is absolutely void for the reason that it is unconstitutional, upon two grounds. The first ground is that it discriminates between those shippers who reship their material on the road which brought the rough material to the mill, and those who do not reship, and, therefore, is void in view of the decision of the Supreme Court in the Lake Shore & Michigan Southern Railroad Company v. Smith, 173 U. S. 684. The small manufacturers of lumber who only manufactured for the local demand and shipped none of the material out received no rebate. Cotting v. Kansas City Stock

Yards Company, 183 U. S. 79. The other ground upon which we declared it unconstitutional was that it appeared in that case, as it appears now in this case by the agreed facts, that 92 per cent of this rough material after being manufactured into lumber or staves, was shipped out of the state; that the rough material manufactured into staves was practically all shipped out of the state because there are so few cooperage companies which buy the manufactured staves in the State of Arkansas that there is practically no market, and that this fact was known to the manufacturers at the time they had the logs, or rough material, hauled to the mill. The lumber manufactured by these lumber mills is so much greater than it is possible can be used in the State of Arkansas, that it was well known at that time that over 90 per cent of it would have to be shipped out of the state and only the remaining portion could be sold in the state. The order of the commission makes no distinction between the manufactured articles which are to be shipped out of the state and those which are to be shipped to other places in the state. If the Supreme Court of the State of Arkansas, in construing this order, had construed it to apply only to intrastate shipments, that would have been conclusive in this court that the order of the commission applies only to intrastate, but the Supreme Court of this state, in construing this order in Chapman-Dewey Lumber Company v. Jonesboro, Lake City & Eastern Railroad Company, 97 Ark. 300, held that the order applies just as much to the manufactured product which was shipped out of the state as to that which was shipped to places in the state. The order is, therefore, not separable and must be by this court held to apply to interstate as well as intrastate shipments. In view of the decision of the Supreme Court of the United States in the Trade Mark cases, 100 U. S. 92, Illinois Central Railway Company v. McKendrie, 203 U. S. 514, Employers' Liability cases, 207 U. S. 463, such an order is a burden upon interstate commerce, and, for that reason, void. Upon these two grounds the court holds that the exceptions are well taken and should be

sustained. In view of the ruling of the court on the first exception, it is unnecessary to pass upon the other exceptions mentioned.

I. THE ROUGH MATERIAL RATES ARE VOID ON THE GROUND OF DISCRIMINATION.

The case of *Lake Shore & Michigan Railway Company* v. *Smith*, 173 U. S. 684, cited by the District Court, related to a statute of Michigan providing that railroads should keep on sale thousand-mile nontransferable tickets and sell them at less than the maximum rates prescribed by the state law. The court held that the power to enact general laws regulating charges on railroads did not include the power to compel a railroad company to make an exception of some particular class in the community, and to serve that class at less than it had the right to charge others. The Legislature having fixed a maximum rate, the company has the right to insist that all persons shall be compelled to pay alike.

It was contended that the power to impose reduced rates existed on the ground of public convenience. The court refused to entertain the contention and said at page 698:

"It is not legislation for the safety, health or proper convenience of the public, but an arbitrary enactment in favor of the person spoken of, who in the

legislative judgment, should be carried at a less expense than the other members of the community. There is no reasonable ground upon which the legislation can be rested unless the simple decision of the Legislature should be held to constitute such reason."

It distinguishes the case of *Lake Shore, etc.*, v. *Ohio,* 173 U. S. 285, where the court sustained the validity of a statute of Ohio requiring railroad companies carrying regular passenger trains to stop at stations containing over three thousand inhabitants for time sufficient to let off passengers, because the enactment subserved the public convenience, and on the ground that "the power of the state by appropriate legislation to provide for the public convenience stands upon the same ground precisely as its power by appropriate legislation to protect the public health, public morals or the public safety."

In *Pennsylvania Railroad Company* v. *Towers,* 245 U. S. 6, the power of the State Public Service Commission of New York to establish special and reduced rates applicable to commutation tickets came before the court, and the validity of the order of the commission was sustained on the ground that it applied to a particular service, different from that generally rendered by railroads to the public, and to passengers who sustained a peculiar relation to the service, was for the

convenience of the public, and therefore within the police power. Distinguishing the case in those respects from the Lake Shore case cited above, the court cited with approval the ruling of the appellate division of the Supreme Court of New York from which the case was removed by writ of error. That court held that the ruling in the Smith case was based on the ground that the reduced rate prescribed for mileage tickets under the Michigan statute "was not for the convenience of the public and thus within the police power but for the convenience of certain individuals who were permitted to travel upon the railroads for less than the reasonable rate prescribed by law." Other cases distinguishable on the ground that they involved public convenience are cited, and a quotation by this court from the opinion of the state court ends with the following language:

"We conclude that the statute in question is valid as conferring power on the commission to regulate rates for the *public convenience and welfare*" (p. 15).

The court also cited the ruling of the Interstate Commerce Commission in the Commutation Rate Case, 21 I. C. C. 428, where it was held that commutation tickets were very essentially different in character from mileage tickets, in that the former were important to many suburban communities near large cities, the

growth and prosperity of which largely depended on reasonable and efficient commutation service, and involved the public convenience and welfare.

The line of distinction drawn in all these cases, and upon which the validity of this character of legislation is to be determined, is whether the object of the legislation, or the regulation, is the promotion of the convenience and welfare of the public. When that is not the case and the discrimination is for the benefit of some particular class in the community without any reasonable basis therefor, the power is wanting and the discrimination is illegal.

The rule established by the cases as we understand them is expressed by the following language taken from the Lake Shore case at page 692:

"The power of the Legislature to enact general laws regarding a company and its affairs does not include the power to compel it to make an exception in favor of some particular class in a community and to carry the members of that class at a less sum than it has the right to charge those who are not fortunate enough to be members thereof. This is not reasonable regulation."

And again at page 695:

"The Legislature can not enact a law making maximum rates and then proceed to make exceptions to it

in favor of such persons or classes as in the legislative judgment or caprice may seem proper."

And at page 694, referring to maximum freight rates, the court said:

"If this power exists it must include the right of the Legislature, after establishing maximum freight rates, to also direct the company to charge less for carrying freight where the party offering it sends a certain amount, and to carry it at that rate for the next two or five or ten years. Is that an exercise of the power to establish maximum freight rates? Is it a valid exercise of the power to regulate the affairs of a corporation? The Legislature would thus permit not only discrimination in favor of the larger freighter as against the smaller one, but it would compel it."

In the case of *Cotting* v. *Kansas City Stock Yards*, 183 U. S. 79, the same principle was invoked and sustained. The court held that classification of stockyards made by the statute of Kansas was based solely on the amount of business done and without any reference to the character and value of the service rendered, and at page 112 said:

"This statute is not simply legislation which in its indirect results affects different individuals or corporations differently, nor with those in which a classification is based upon inherent differences in the charac-

ter of the business, but is a positive and direct discrimination between persons engaged in the same class of business and based simply upon the quantity of business which each may do. If such legislation does not deny the equal protection of the laws, we are unable to perceive what legislation would."

The exception in the tariff under consideration is not based on any benefit to the public, or any difference in the service rendered shippers, and its effect is to favor large manufacturers and shippers who are in position to market the product of their mills in other states and foreign countries.

II. THE ORDER OF THE RAILROAD COMMISSION AS CONSTRUED BY THE STATE IN CHAPMAN DEWEY LUMBER COMPANY V. J. L. C. & E. RY. CO., 97 ARK. 300, APPLIES TO INTERSTATE SHIPMENTS AND IS VOID.

The Supreme Court of Arkansas held that the Rough Material Rates apply to all shipments without regard to whether the place of ultimate destination was within or without the state, and apply as well to the manufactured product which was shipped out of the state as to that which was shipped to places within the state.

The rough material rates are conditioned on the reshipment of the manufactured product over the same

line by which it moved into the milling point, and the order of the commission provided that the railroads might require shippers to enter into contracts for reshipment of the finished product. The evidence shows that there was little market in the state for the finished product and that 95 per cent of it was shipped to other states; that it was the intention of all the claimants (whose claims were filed before the master) "at the time they shipped the rough material into milling points to mill said rough material with the object of selling said finished product and shipping it as soon as practicable, and all of them knew and intended at the time they brought the rough material into the mill on account of the previous course of dealings in the business that 95 per cent of the finished product would be by them shipped to points outside of the state of Arkansas."

When the rough material was delivered to the railroad a bill of lading was issued from the point of delivery to the mill. When it reached the mill it was finished into merchantable articles and stacked in the yards, or placed in dry kilns. The process of manufacturing and drying occupied several months. The average time between the delivery of the rough material at the mill and the preparation and shipment of the finished product was about five months. The different articles manufactured from the rough material

were classified as they came from the mill in their finished state and sales made from such stock. At the time the rough material was shipped to the mills the owners did not know to whom they would sell the finished product, but did know from the course of the business that 95 per cent of the finished product was destined to points outside of the state of Arkansas. The object of the order was to confer on shippers milling in transit privileges and it is obvious that practically all the shipments that were within the order of the commission would be interstate in character, as the transportation would not be completely performed until the shipments had reached their ultimate destination, under the arrangement for reshipping from the mills.

In the Trademark cases referred to by the District Court it was held that where Congress enacts a law which can only be valid as a regulation of commerce it is expected that it will on the face of the law, or from its essential nature, be limited to commerce with foreign nations or among the states or with the Indian tribes, and if not so limited it is in excess of the power of Congress. 100 *U. S.* 96. This ruling applies to the order of the Railroad Commission. It further held that such an act was not separable, and that it was not within the power of the courts to give the words used by Congress a narrower meaning than they were mani-

festly intended to bear. As construed by the Supreme Court of the state, the order of the Railroad Commission was intended to cover all shipments of rough material without regard to the destination of the material in its finished form whether within or without the state. The court further said that the proposed limitation can not be obtained by striking out or disregarding words, but only by inserting language that was not within the statute, and if the court should undertake by judicial construction to make a law which Congress did not make it is probable it would do what, if the matter were before it, that body would be unwilling to do, namely, make a trademark law which is only partial in its operation. The same may be said with equal force in regard to the order of the Railroad Commission.

U. S. v. Reece, 92 U. S. 214.

Employers Liability Case, 207 U. S. 463.

Illinois Central v. McKendrie, 203 U. S. 514.

The controlling principle in cases of this character is set out in Texas & N. O. Ry. Co. v. Sabine Tram Co., 227 U. S. 111, in which the former decisions of the court are reviewed, and it was held that the essential character of the shipment must be regarded. It was contended in that case that when lumber left Ruliff, where the shipment originated, it was not started on its journey to Europe. The character of the shipment did not

contemplate or provide that it should go beyond Sabine "through the agency of that shipment." Conceding that there must be continuity of movement to a foreign destination, the court held that the principle was not defeated by the fact that the shipment was not made on through bills of lading. Referring to Southern Pacific Terminal Company v. Interstate Commerce Commission, 219 U. S. 498, the court said it was contended in that case that the transit of the cake and meal ended at Galveston, but that the contention was rejected, the court holding that the doctrine of Coe v. Erroll, 116 U. S. 517, was not defeated by the fact that the routing of the freight ended at Galveston, that being the final point of concentration, the cake being there manufactured and sacked for export, just as in these cases the mill was the point of concentration where the rough material was to be manufactured and prepared for shipment. The principles of law upon which the case turned are summed up on page 126 as follows:

"The determining circumstance is that the shipment of the lumber to Sabine was but a step in its transportation to its real and ultimate destination in foreign countries. In other words, the essential character of the commerce, not its mere accidents, should determine. It was to supply the demand of foreign countries that the lumber was purchased, manufactured and shipped, and to give it a various character by the steps

in its transportation would be extremely artificial. Once admit the principle and means will be afforded for evading the national control of foreign commerce from points in the interior of a state. There must be transshipment at the seaboard, and if that may be made the point of ultimate destination by the device of separate bills of lading the commerce will be given local character, though it be essentially foreign."

Continuing the court said: "That it is the nature of the traffic and not its accidents which determine its character is illustrated by Ohio Railroad Commission v. Worthington, 225 U. S. 101." In that case a certain class of coal was transported on bills of lading to a point on Lake Erie, where it was accumulated in large quantities and only taken out of the accumulated lots from time to time for the purpose of shipment out of the state; it was not known to what particular destination the coal would be ultimately shipped. Small quantities were at times unloaded on one of the islands in the State of Ohio, but no importance was attached to that fact. The important point the court said at page 110, referring to the case of Southern Pacific Terminal Company, was that the shipments were destined for export, and the case therefore came under the ruling in Coe v. Erroll, *supra*, where it was said that goods are in interstate, and necessarily as well in foreign commerce, when they have "actually started in the course

of transportation to another state, or are delivered to a carrier for transportation." In Sabine Tram case the court distinguished the case of Gulf, Col. & S. F. Ry. Co. v. Texas, 204 U. S. 403. In that case corn, which was the subject of the shipment, was purchased by Hardin Grain Company from Harroun Commission Company to be delivered at Texarkana, Texas. The commission company shipped the corn from South Dakota to Texarkana and delivered it to the Hardin Grain Company at that place. The latter company shipped the corn in the same cars in which it was brought to Texarkana to Goldthwaith, Texas, to fill an order for corn it had sold parties at that place. The court held the corn did not come into the control of the Hardin company until it was delivered to them at Texarkana; that there was no connection between the transportation of the corn from South Dakota to Texarkana, and from the latter point to Goldthwaith, the one having ended and served its purpose before the other commenced; that these were the determining facts, and the history of the corn prior to its arrival at Texarkana was put aside as irrelevant and the controlling fact decided to be that the contract between the Hardin Grain Company and the Harround Commission Company was completed in accordance with its terms when the corn was delivered to the Hardin company at Texarkana and

that company did not acquire title and control of it until the first contract of transportation had been completed.

Swift & Co. v. U. S., 196 U. S. 375, 298.

Penn. Ry. Co. v. Coal Co., 238 U. S. 457, 465.

In these cases the rough material was shipped to the mills to be converted into marketable products under an arrangement by which the finished product was to be reshipped on the carrier that brought the material from the woods to its final destination for delivery to the purchaser. The rough material was not marketable, and it was essential that it should be treated at the mills before it could be disposed of. The record shows that there was no local market, and that it was known and intended that practically all of the finished product would be shipped out of the state. The interruption in the journey from the woods to final destination was merely temporary, and for the purpose of effectuating the intention at the time of shipment of selling and transporting it to another state, which the record clearly established was the paramount purpose of the shippers. This court, speaking of an analagous situation in regard to cattle in *Swift & Co.* v. *United States*, 196 U. S. 375, said at page 398:

"Commerce among the states is not a technical legal conception, but a practical one, drawn from the course of business. When cattle are sent for sale from

a place in one state, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock yards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the states, and the purchase of the cattle is a part and incident of such commerce."

The purpose of the interruption in transit was practically the same in these cases as in the case referred to in the quotation. In both cases it was for the purpose of finding a purchaser of the property. The only difference is that in these cases it was necessary to treat the rough material for the purpose of converting it into a marketable condition which necessarily involved some delay, but the length of the interruption was not material in determining the character of the shipment. It was but an incident to the main object which the record very clearly shows, as stated above, was to market the produce in another state.

In *Lusk* v. *Atkinson*, 186 S. W. 703, the Supreme Court of Missouri, after reviewing the rulings of this court, state (page 710) their effect in language which we think is worth reproducing in this connection:

"Applying the foregoing decisions to the facts in this case, the sole question presented is, What was the

'essential character' of the shipments of ties over defendant's railroad? In order to determine this question, it is important and necessary to ascertain: (1) What was the motive or intention of the shipper? (2) And what was the object and purpose to which the shipment was devoted? These two tests necessarily determine the nature of the shipment as being interstate or intrastate, and they were had in mind in each of the foregoing cases wherein the court passed upon that question.

"In the Galveston case the intention of the shipper and the object of the shipment (export) were held sufficient to show that the carriage of cotton seed cake from other localities in Texas to the wharf at Galveston, although transported under a bill of lading to the shipper's order, and although delayed at Galveston until it could be milled and ground into meal and sacked and forwarded to shipper's order, was from its initial point of delivery to the carrier a movement in interstate commerce. In one respect the shipments of the ties presents a stronger case; for in that matter the undisputed testimony shows that the great bulk of those consigned to the shipper's order from other localities in Missouri to the barge landing place at Commerce were intended after assortment to be forwarded out of the state to fill previous contracts made for their purchase, and that fact did not exist in the Galveston case,

for it was shown in that case that the buyer of cotton seed cake did not know to whom the manufactured product thereof (meal) would be sent after he had caused it to be brought to and delivered to himself at Galveston. It is evident as to the shipments from Commerce, Mo., to points outside this state the ruling in the Galveston case is clearly controlling. Equally decisive is the Worthington case, *supra*, 225 U. S. 101. That case related, as appears from the above statement of facts, to coal shipments from the interior of Ohio to its lake ports, whence the coal, or the bulk of it (for it appeared in the facts in that case that a small quantity of the coal was unloaded finally on one of the Ohio islands in Lake Erie), was intended to be trans-shipped in lake boats to some distance outside the state of Ohio, but neither the boat nor the ultimate destination were known when the coal was delivered to the initial carrier in the interior of Ohio. However, it was held that the movement in interstate commerce began at the point of delivery to the first railroad carrier, and that the state of Ohio could fix no rates governing the charges from that point to the lake port. In the case at bar it was known when the ties were purchased, and before they were delivered to the initial carrier that the bulk of them, after assortment at Commerce, Mo., to fill existing orders, would be thence transported by barge or interstate carrier outside the state. It will also be

noted that the fact that a negligible quantity of the coal was disposed of finally on one of the Ohio islands did not alter the interstate character of the great bulk of the commodity. In the case at bar the evidence shows that, except 2,500 ties remaining at Commerce, and which, as far as the evidence in this case goes, may yet be shipped abroad, and, except one carload which complainants caused to be sent to St. Louis, after filing their complaint, the entire purchase of ties made by plaintiffs in Southeast Missouri has been transported to other states and delivered to the parties who purchased it before the shipment began."

REPLY TO SOME CONTENTIONS CONTAINED IN THE BRIEFS OF THE INTERVENING CLAIMANTS.

Since preparing the above matter for the printer we have obtained a copy of the brief prepared by learned counsel. We have not time for a full review of the contentions, and confine ourselves to a few points that occur to us on reading the brief.

Counsel cite the case of Houghton v. Meyer in support of the assertion that the reversal of the decrees in these cases reversed the provision releasing the bonds, but in that case the appeal was from that part of the decree releasing and refusing to enforce the bond (see op. 208 U. S. 154), while in these cases the question as to the release was not raised by the appeals.

Conceding that the claims in Series C can not be recovered on the bond, counsel insist that said claims are recoverable against the complainants in this action on the principle of restitution. They are not in a position to invoke that principle in support of their claims in this proceeding, whatever their right might have been in other proceedings. These claimants were not parties to the original proceedings, or before the court; they came in by intervening before the master under orders entered for the enforcement of liability on the bonds. They can not change the nature of the proceedings, or

its incidents, so as to sustain a recovery on grounds that would not have entitled them to it in the first instance. This seems to be the view taken by this court in Railway Company v. McKnight, 244 U. S., p. 373. The court there held that Gallup, a shipper, did not become a party to the suit, and expressed a doubt as to the power of the court to determine the liability of complainants on the bond in the main cases.

Counsel attempt to limit the exception to the claim of the Arkadelphia Milling Company on the ground that the Railroad Commission rates were alternative and discriminatory to cases where discrimination was between those who made contracts and those who did not. It is a very narrow view to take of this exception and it is not in accordance with the view taken of it at the trial in the court below by counsel on either side or by the court.

Item 79 of the tariff, which provided for the lower rough material rates, provided that they should be conditioned upon the manufactured product being reshipped over the same line bringing in the rough material.

Paragraph (c) under said item provided that carriers would be allowed by the Railroad Commission to require consignees, in order to avail themselves of the benefit of the lower rate, to enter into a contract for the

reshipment of the rough material. (See record, pp. 17 and 18.)

There were two ways in which a shipper could obligate himself contractually to reship and thereby become entitled to the benefit of the lower rate. One was to enter into a contract in writing to be approved by the Railroad Commission; the other was to accept and act on Item 79 by availing himself of the lower rate. A shipper who did that was as much bound by contract to reship as if he had entered into a written contract with the railroad. The exception, which will be found at page 25 of the printed record, is based "on the ground that the provisions of Item No. 79 are in the alternative, and are also discriminatory against shippers who do not enter into contracts with the carrier with reference to reshipment of specific percentages of the finished product." The evident and very clear intention of this exception was to distinguish between claimants who had availed themselves of the lower rate by consenting to reship, either through a written contract or by accepting and availing themselves of the benefit of the lower rate, and those who did not. But if nothing had been said in the exception in regard to discrimination it would have been sufficient because it is based on the ground that the rates are in the alternative and that feature of the exception would cover every question that could arise under it.

The learned counsel go further in this connection, and insist that the railroads can not question the reasonableness or the validity of the Rough Material Rates, or protect themselves against a recovery of the difference between those rates and the rates actually charged, and base this contention on the ground that the reasonableness of a rate is not a judicial question. They say "whether the rates in the tariff on any shipment are unreasonable on any account is not a question that can be litigated between the carrier and the shipper. The shipper and the carrier must rely on the legislative rates fixed by the Railroad Commission, and if the courts are appealed to on the ground that any particular rates are unreasonable it must be in a proceeding against the rate-fixing power," etc. We call the attention of the court to the fact that the rates charged the claimants by the railroads on the rough material from the woods to the mill are lower than the maximum local rates provided in Items 40 and 41 of the commission tariff. (See printed record, page 24.) The maximum local rate prescribed in Items 40 and 41 must be presumed to be a reasonable rate and fix the proper standard of charge as between the carrier and shipper. The commission has no power or authority, after having fixed a maximum rate, to provide a different and lower rate, and the presumption in such cases

is that the maximum rate is reasonable. Lake Shore & Michigan R. R. Co. v. Smith, *supra*, p. 696.

But the question of reasonableness of rates is not involved in this point. We assert that the rough material rates which claimants seek to enforce are void, not because they are unreasonable, but because, first, they involve an attempt on the part of the State Railroad Commission to regulate rates on interstate commerce; and, second, because the alternative rough material rates are discriminatory in favor of one class of shippers and against other shippers, and on either or both of said grounds that the rough material rates are void on the face of the tariff and without regard to their reasonableness.

In support of their argument that the shipment of the rough material into the milling point and its subsequent transportation to points outside of the State of Arkansas did not constitute interstate commerce, counsel cite a number of tax cases decided by this court, prominent among which are: Coe v. Errol, 116 U. S. 517; General Oil Company v. Cain, 209 U. S. 211; American Steel Wire Company v. Speed, 192 U. S. 500; Brown v. Houston, 114 U. S. 622; Pittsburgh & Southern Coal Company v. Bates, 156 U. S. 577; Bacon v. Illinois, 227 U. S. 504. The distinction to be drawn between those taxing cases and transportation cases, such as are here involved, has been pointed out and well rec-

ognized by this court since the case of Woodruff v. Parham, 8 Wall. 123. In discussing Woodruff v. Parham, we desire to point out that the charter of Mobile authorized that city to impose a tax for municipal purposes on real and personal estate, auction sales and sales of merchandise, etc. Woodruff as auctioneer and commission merchant had sold a large amount of goods for others and on his own account, and insisted that since the goods were brought in from other states and sold in original packages he was not liable to the tax imposed by the city ordinances upon sales of merchandise. In discussing and in sustaining the tax the court say:

"The case before us is a simple tax on sales of merchandise, imposed alike upon all sales made in Mobile, whether the sales be made by a citizen of Alabama or of another state, and whether the goods sold are the produce of that state or some other. There is no attempt to discriminate injuriously against the products of other states or the rights of their citizens, and the case is not, therefore, an attempt to fetter commerce among the states or to deprive the citizens of other states of any privilege or immunity possessed by citizens of Alabama. But a law having such operation would, in our opinion, be an infringement of the provisions of the Constitution which relate to those subjects, and, therefore, void. There is also, in addition to the restraints which those provisions impose by their own force on the states, the unquestioned power of Congress, under the authority to regulate commerce among the states, to interpose, by the exercise of this power, in such a manner as to prevent the state from any oppressive interference with the free interchange of commodities by the citizens of one state with those of another."

In Brown v. Houston, it will be noted that Brown was in the coal business in Pittsburgh, Pennsylvania, and engaged in shipping coal to New Orleans. The coal was assessed for taxation while afloat in the Mississippi river in the original condition in which it was exported from Pennsylvania. The tax on the coal had been paid in Pennsylvania. From a transportation standpoint the coal was clearly interstate commerce, but for the purpose of taxation it was treated as a part of the general mass of property of the state of Louisiana. It was taxed in common with all property found within the state and the tax was sustained.

Pittsburgh & Southern Coal Company v. Bates is another coal case. There the coal company was carrying on business in Pittsburgh, Pennsylvania, and was shipping coal down the Mississippi river to Louisiana points. Part of the coal taxed was in vessels, being about one hundred in number, which as a matter of convenience had been stopped and moored in the Mississippi river about nine miles above the port of Baton Rouge. In other words, the coal had been stopped before reaching its final destination. Clearly, from a transportation standpoint, the coal was moving in interstate commerce. However, for taxation purposes, the court held that it had become incorporated into the bulk of the property of the State of Louisiana and

therefore taxable. In discussing the question the court use the following language:

"The decision of the court in Brown v. Houston seems to be conclusive of the case now before the court. The property in this case, as in that, still belongs to the original owners in Pennsylvania, but is brought on the navigable waters of the United States, in boats and barges to Louisiana for the purposes of sale, and is subject to taxation and sale as any other property of the citizens of the United States is subject when it becomes incorporated into the bulk of the property of the country, unless there be some special exemption set forth why it should not be thus taxed and sold, of which there is none here."

Bacon v. Illinois. Bacon owned a grain elevator in South Town, city of Chicago. Shipments of grain made by different parties in the western states destined to eastern markets were purchased by Bacon after they were shipped and the bills-of-lading were assigned to him and he enjoyed the transit privileges of putting the grain in his elevator for the purpose of cleaning, inspecting, weighing, clipping, drying, sacking, grading and mixing. After this was done the grain was shipped to the destination as indicated in the original bill-of-lading. The grain was at rest in the state of Illinois, and for taxing purposes became a part of the property of that state. The sole question decided was whether the grain was *in transit* in interstate commerce. It is not determined in that case whether the grain constituted *interstate commerce*. The only thing

the court decided was that it was not *in transit* in interstate commerce so as to relieve it from taxation. In discussing the question the court say:

"He had established a local facility in Chicago for his own benefit and while, through its employment, the grain was there at rest, there was no reason why it should not be included with his other property within the state in an assessment for taxation which was made in the usual way without discrimination."

The court calls special attention to the proposition that it is not a question as to the extent of the power of Congress to regulate interstate commerce, but whether the particular exercise of state powers in conflict with the paramount authority.

"The question, it should be observed, is not with respect to the extent of the power of Congress to regulate interstate commerce, but whether a particular exercise of state power in view of its nature and operation must be deemed to be in conflict with this paramount authority. Thus, goods within the state may be made the subject of a nondiscriminatory tax though brought from another state, and held by the consignee for sale in the original packages."

The distinction pointed out in the above cases is very clearly stated in the case of American Steel & Wire Company v. Speed. In discussing the precise question the court employs the following language:

"Woodruff v. Parham and Brown v. Houston on the other hand, so far as interstate commerce was concerned, dealt with no positive and absolute inhibition against the exercise of the taxing power, but deter-

mined whether a particular exertion of that power by a state so operated upon interstate commerce as to amount to a regulation thereof, in conflict with the paramount authority conferred upon Congress. In order to fix the period when interstate commerce terminated, the criterion announced in Brown v. Maryland—that is, sale in the original packages at the point of destination—was applied. The court, therefore, conceded that the goods which were taxed had not completely lost their character as interstate commerce, since they had not been sold in the original packages. As, however, they had arrived at their destination, were at rest in the state, were enjoying the protection which the laws of the state afforded, and were taxed without discrimination like all other property, it was held that the tax did not amount to a regulation in the sense of the Constitution although its levy might remotely and indirectly affect interstate commerce. In Leisy v. Hardin and Lyng v. Michigan the same question in a different aspect was presented. The goods had reached their destination and the question was not the power of the state to tax them, but its authority to treat the goods as not the subjects of interstate commerce and to prohibit their introduction or sale. This was held to be a regulation within the constitutional sense, and, therefore, void. The cases, therefore, did not decide that interstate commerce was to be considered as having completely terminated at one time for the purposes of interstate commerce. But both cases, whilst conceding that interstate commerce was completely terminated only after the sale at the point of destination in the original packages, were rested upon the nature and operation of the particular exertion of state authority considered in the respective cases."

General Oil Company v. Crain cites and approves the rule in American Steel & Wire Company v. Speed above quoted.

Counsel refer to the cases of McCluskey, Admr., v. M. & N. Ry. Co. *et al.*, 243 U. S. 36. To demonstrate the distinction between that case and the cases at bar it is only necessary to call attention to the facts involved in that case. It was a suit for damages brought under the Employers' Liability Act to recover damages resulting from injuries suffered by Nordgard while in the employ of the defendant railway company. The defendant, Stimson Mill Company, was engaged in the logging and lumber business and carried its logs on its own logging road, the Marysville & Northern Railway, from timber land owned by it in Washington to a point near Marysville in that state, where they were dumped into Puget Sound. Part of the logs were thereafter sold to mills located on the Sound and they were taken away by the purchasers to their mills or places of storage and subsequently resold for piling or poles to purchasers both within and without the state. The rest of the logs were rafted and taken by tugs to the Stimson Company's mill at Ballard, Washington, where they were manufactured into lumber, which was thereafter sold, about 20 per cent in local markets and the remainder shipped upon orders either by rail or boat to various points in the state of Washington and other states and countries. 211 Fed. 722. In discussing the movement of the logs over the railroad into Puget Sound the court said: "There was no initial

shipment of the goods. The transportation of the poles from the forest in which they were cut to tidewater, where they were sold, was not a shipment. There was no contract of carriage; there was no bill-of-lading; there was no consignor or consignee. The goods were not committed to a carrier. The defendant mill company simply carried over its own road, on its own cars, its own goods to a market where it sold and delivered them. It had no concern with the subsequent disposition of them. It was under no obligation to deliver them to another carrier, and no other carrier was under obligation to receive them or carry them further". 218 Fed. 740.

Respectfully submitted,

JOHN M. MOORE,

GEORGE A. MCCONNELL,

Attorneys for the Railway and Guaranty Companies, Appellants, in Nos. 94 *and* 95, *and Appellees in Nos.* 92 *and* 93.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1916.

ARKADELPHIA MILLING COMPANY.....*Appellant,*

v. No. 845.

ST. LOUIS, SOUTHWESTERN RAILWAY COMPANY AND ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY .....*Appellees.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE EASTERN DISTRICT OF ARKANSAS.

MOTION OF APPELLEES TO DISMISS APPEAL.

Appellees pray that said appeal be dismissed on the ground that this court has no jurisdiction to hear and determine the same and acquired no jurisdiction thereof by virtue of the aforesaid proceedings and appeal.

JOHN M. MOORE,
Attorney for Appellees.

AGREED STATEMENT OF FACTS.

The appellees brought separate suits against the State Railroad Commission of Arkansas to enjoin the

rates prescribed by statute of the State and the orders of the Railroad Commission for the transportation of freight and passengers on railroads within the State on the ground that the same were confiscatory and in violation of the provisions of section 1, article 14 of the amendments to the Constitution of the United States. The jurisdiction of the Federal court depended solely upon the question that the laws of the State fixing rates for transportation on railroads were in violation of the Constitution of the United States. Temporary injunctions were issued and continued in force during the pendency of the suits. On final hearing the bills were sustained and a decree perpetuating the injunction entered in each case. Appeals were prayed by the defendants to this court, the cases were heard together, and the decrees of the circuit court were reversed at the October term, 1912, on the ground that the allegations were not sustained by the evidence, and the cases were remanded with directions to dismiss the bills without prejudice. (Allen v. St. Louis, I. M. & S. Ry. Co., 230 U. S. 553.) After the cases were remanded to the district court (the circuit court having in the meantime been abolished), decrees were rendered in pursuance of the mandate dissolving the injunction and appointing a master to take an account and determine the claims for overcharges collected from passengers and shippers on the railroads during the time the injunc-

tions were in force. (Printed Record, 14.) The appellants filed claims in each of the cases for the refund of the difference between the rates prescribed by the law of the State for the transportation of freight and those put in force by the appellees during the time the injunctions were in force. The claims were allowed by the master, and upon the filing of his report appellees filed exceptions to the allowance thereof on the ground that the commission tariff regulating the rates on the commodities involved in the shipments made by the claimant were in the alternative and discriminated against a large class of shippers in said State, and were void (Printed Record, 25).

The district court sustained appellee's exceptions on said ground and entered orders disallowing appellant's claims. The proceedings were consolidated and other claims were by the court allowed, and both parties desiring to appeal and being in doubt as to whether the appeal lay to this court or to the Circuit Court of Appeals, prayed and were allowed appeals to both courts, which are now pending. This motion to dismiss is filed for the purpose of having the question of jurisdiction settled before the case is reached on its merits.

Appellants waive notice of said motion and agree that it be submitted without delay, to the end that the question involved may be disposed of at an early date,

and before the case is reached on its merits in this court or in the Circuit Court of Appeals.

J. F. Loughborough,
Attorney for Appellants.
John M. Moore,
Attorney for Appellees.

BRIEF IN SUPPORT OF MOTION TO DISMISS.

Where the jurisdiction of the district court rests solely on the ground that the suit arose under the Constitution of the United States, the appellate jurisdiction of the Supreme Court is made exclusive by section 5 of the Judiciary Act of 1891, Judicial Code, section 128; Loeb v. Columbia Township Trustees, 179 U. S. 472, 479.

The jurisdiction of the district court over the main controversy rested solely on the ground that the cause of action arose under the Constitution of the United States, and the point to be decided is whether the proceedings subsequent to the final decree of the district court pursuant to the mandate from this court, and the order of reference to the special master contained therein is, for the purpose of this inquiry, to be attributed to the original source of jurisdiction, or if the question on which the right of appeal to this court depends must arise in this proceeding.

In Carey v. Houston & Texas Central Ry. Co., 150 U. S. 170, 180, a proceeding to set aside a former decree on the grounds of fraud and want of jurisdiction, it was held that it is the jurisdiction of the district court over the particular case in which the appeal is prosecuted that justifies an appeal direct to this court, and that no question of jurisdiction over the suit in which the former decree was rendered can be availed of to sustain an appeal from the decree to be reviewed in the case before the court. This court treated it as a separate and distinct case from the original proceeding so far as the inquiry before it was concerned, and said: "No question of jurisdiction over the foreclosure suit before the rendition of a decree passed therein can be availed of to sustain the present appeal from the decree in this proceeding." The case came before this court again in 161 U. S. 115, 130, 132, on appeal from a decree rendered in the Circuit Court of Appeals, for the Fifth circuit, to which an appeal had been taken from the decree of the circuit court, and the court held that a suit in equity by a corporation, or the stockholders thereof, in the circuit court to set aside a final decree against a corporation in a foreclosure suit on the ground that the decree was obtained by collusion and fraud, and that the court had no jurisdiction, was ancillary, and a continuation of the main suit, so far as the jurisdiction of the circuit court as a court of the

United States is concerned; that the jurisdiction of the circuit court over the suit rested on its jurisdiction over the case in which the decree sought to be impeached was rendered, in which the jurisdiction depended entirely upon diverse citizenship, and that as the jurisdiction of the circuit court was invoked throughout the litigation on the ground of diverse citizenship, the decree of the Circuit Court of Appeals was final.

We realize that there are points of difference growing out of the fact that the decree here appealed from was rendered in the same case as the original decree dissolving the injunction and dismissing the bill, and that the constitutional question was the sole ground of jurisdiction in the case; and we confess a doubt as to the application of the rulings cited to the facts of this case.

Respectfully submitted,

John M. Moore,

Attorney for Appellees.

BRIEF IN RESPONSE TO MOTION TO DISMISS.

The points involved on the appeal in this case are substantially the same as those involved in case No. 846, Jos. F. Hasty and Wm. C. Hasty, composing the partnership of J. F. Hasty & Sons, Appellants, v. St.

Louis Southwestern Railway Company and St. Louis, Iron Mountain & Southern Railway Company, Appellees, on which a motion to dismiss the appeal was filed by appellees, and is now pending.

On this appeal, as on the one just mentioned, the proceedings are ancillary to a proceeding in which the jurisdiction of the court below was invoked solely on the ground of the construction or application of the Constitution of the United States. The point involved on this appeal is whether the rates prescribed by the Railroad Commission of the State of Arkansas deny rights guaranteed by the Constitution of the United States, and deny the appellees equal protection of the law and constitute a taking of its property without due process of law.

The exception sustained by the court below presented the point that the rates promulgated by the Arkansas Railroad Commission, applicable to these shipments, discriminated against other shippers in favor of shippers in the class of appellants and to the extent of the difference in the rates between classes they constitute a taking of the property of appellees without due process of law, and deny to appellees equal protection of the law.

Therefore, whether the jurisdiction of the district court in the main case or the point involved on this par-

ticular appeal is looked to, the jurisdiction on appeal from the district court is in this court, and not in the Circuit Court of Appeals.

A memorandum brief on these points is filed in case No. 846, to which we refer, *infra*, p. 12.

Respectfully submitted,

J. F. Loughborough,

Attorney for Appellants.

JOS. F. HASTY AND WM. C. HASTY, COMPOSING THE PARTNERSHIP OF J. F. HASTY & SONS ..... *Appellant,*

v. No. 846.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY AND ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ..... *Appellees.*

MOTION OF APPELLEES TO DISMISS APPEAL.

Appellees pray that said appeal be dismissed on the ground that this court has no jurisdiction to hear and determine the same and acquired no jurisdiction thereof by virtue of the aforesaid proceedings and appeal.

John M. Moore,
Attorney for Appellees.

AGREED STATEMENT OF FACTS.

The appellees brought separate suits against the State Railroad Commission of Arkansas to enjoin the rates prescribed by statute of the State and the orders of the Railroad Commission for the transportation of freight and passengers on railroads within the State on the ground that the same were confiscatory and in violation of the provisions of section 1, article 14, of the

Amendments to the Constitution of the United States. The jurisdiction of the Federal court depended solely upon the question that the laws of the State fixing rates for transportation on railroads were in violation of the Constitution of the United States. Temporary injunctions were issued and continued in force during the pendency of the suits. On final hearing the bills were sustained and a decree perpetuating the injunction entered in each case. Appeals were prayed by the defendants to this court, the cases were heard together and the decrees of the circuit court were reversed at the October term, 1912, on the ground that the allegations were not sustained by the evidence, and the cases were remanded with directions to dismiss the bills without prejudice. (Allen v. St. Louis, I. M. & S. Ry. Co., 230 U. S. 553.) After the cases were remanded to the district court (the circuit court having in the meantime been abolished), decrees were rendered in pursuance of the mandate dissolving the injunction and appointing a master to take an account and determine the claims for overcharges collected from passengers and shippers on the railroads during the time the injunctions were in force (Printed Record, 14). The appellants filed claims in each of the cases for the refund of the difference between the rates prescribed by the law of the State for the transportation of freight and those put in force by the appellees during the time the

injunctions were in force. The claims were allowed by the master, and upon the filing of his report appellees filed exceptions to the allowance thereof on the grounds: First, that the shipments on which the claim for refund was based constituted interstate commerce, and the rates were not governed by the State laws; second, that the commission tariff regulating the rates on the commodities involved in the shipments made by the claimant were in the alternative and discriminated against a large class of shippers in said State, and was void (Printed Record, 25).

The district court sustained appellee's exceptions on both grounds and entered orders disallowing appellant's claims. The proceedings were consolidated and other claims were by the court allowed, and both parties desiring to appeal and being in doubt as to whether the appeal lay to this court or to the Circuit Court of Appeals, prayed and were allowed appeals to both courts which are now pending. This motion to dismiss is filed for the purpose of having the question of jurisdiction settled before the case is reached on its merits.

Appellants waive notice of said motion and agree that it be submitted without delay, to the end that the question involved may be disposed of at an early date.

and before the case is reached on its merits in this court, or in the Circuit Court of Appeals.

J. F. Loughborough,
Attorney for Appellants.

John M. Moore,
Attorney for Appellees.

BRIEF IN SUPPORT OF MOTION TO DISMISS.

The questions involved in this motion are the same in principle as those raised on the similar motion filed in No. 846, which comes to this court upon the same record as this case.

We therefore refer the court to the cases cited in the brief accompanying motion to dismiss in No. 845, *supra*, p. 4.

Respectfully submitted,

John M. Moore,
Attorney for Appellees.

BRIEF IN RESPONSE TO MOTION TO DISMISS.

The jurisdiction of the district court in the main suit was based upon a right claimed under the Constitution of the United States, and one of the questions presented by this appeal involves a construction of the Constitution of the United States. Thus, under section 238 of the Judicial Code, the case should be appealed

direct to this court, whether it is considered that the right of appeal is governed by the jurisdiction of the court below in the main case or the questions involved in the ancillary proceedings.

There can be no question that the proceedings involved on these appeals are ancillary, and that the jurisdiction of the court below in the main case involved the construction or application of the Constitution of the United States. It has been repeatedly held in analogous cases, that the jurisdiction on appeal in the ancillary case is related to and governed by the jurisdiction in the main case. Rouse v. Letscher, 156 U. S. 47; Gregory v. Van EE, 160 U. S. 643; Gobleman v. Peoria, etc., Ry. Co., 179 U. S. 335, 342; Colorado, etc., Mining Co. v. Turck, 150 U. S. 138; Murphy v. Colorado Paving Co., 166 U. S. 719; Darragh v. Manufacturing Co., 169 U. S. 735.

In Carey v. H. & T. C. Ry. Co., 150 U. S. 170, 180, it appeared that a bill was filed to set aside a foreclosure sale on the ground of fraud. It was not an intervention or bill of review in the foreclosure suit, but in form was an independent proceeding to obtain relief in a court of equity against fraud. Jurisdiction in the foreclosure suit was predicated on diverse citizenship. This court held that the actual question presented on

the appeal did not involve a construction of the Constitution, and that the appeal would not lie to this court.

In Carey v. H. & T. C. Ry. Co., 161 U. S. 115, 128, the same case was before this court on appeal from the Circuit Court of Appeals, and this court then held that the right of appeal from the Circuit Court of Appeals to this court was governed by the jurisdiction of the circuit court, and that as the jurisdiction of the trial court was sought to set aside a sale ordered by that court, the proceeding was ancillary to the foreclosure suit, and as the jurisdiction in the foreclosure suit was because of diverse citizenship, there was no right of appeal from the Circuit Court of Appeals to this court. It should be noticed that in neither of the decisions commented on, was the appeal to this court sought to review a question involving construction or application of the Constitution.

In McFadden v. U. S., 213 U. S. 288, 291, 293, the distinction between the right of appeal from the district court direct to this court, and the right of appeals from the Circuit Court of Appeals to this court, was made plainer.

A material point presented by these appeals involves the construction of the interstate commerce clause in the Constitution, and the court is directly called upon to construe or apply the Constitution. It

seems plain that this court has jurisdiction on appeal without regard to the jurisdiction in the main case. Horner v. U. S., 143 U. S. 570, 577; Loeb v. Columbia Township, 179 U. S. 472; Press Publishing Co. v. Monroe, 164 U. S. 105.

Respectfully submitted,

J. F. Loughborough,

Attorney for Appellants.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY AND ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ..... *Appellants,*

v. No. 847.

SOUTHERN COTTON OIL COMPANY..... *Appellee.*

MOTION OF APPELLEE TO DISMISS APPEAL.

Appellee prays that said appeal be dismissed on the ground that this court has no jurisdiction to hear and determine the same, and acquired no jurisdiction thereof by virtue of the aforesaid proceedings.

J. F. Loughborough,
Attorney for Appellee.

AGREED STATEMENT OF FACTS.

The claims were allowed by the master, and upon filing his report, appellants filed exceptions to the allowance thereof, on the grounds:

First. Because the final decree in the district court relieved appellants from liability for such overcharges.

Second. Because the final decree of the district court granting the injunction relieved appellants from liability for overcharges collected after the date of said

decree (Printed Record, 16). The court overruled the exceptions of appellants on both grounds, and rendered a judgment against them for the amount found by the master.

The appellees brought separate suits against the State Railroad Commission of Arkansas to enjoin the rates prescribed by statute of the State and the orders of the Railroad Commission for the transportation of freight and passengers on railroads within the State on the ground that the same were confiscatory and in violation of the provisions of section 1, article 14, of the Amendments to the Constitution of the United States. The jurisdiction of the Federal court depended solely upon the question that the laws of the State fixing rates for transportation on railroads were in violation of the Constitution of the United States. Temporary injunctions were issued and continued in force during the pendency of the suits. On final hearing the bills were sustained and a decree perpetuating the injunction entered in each case. Appeals were prayed by the defendants to this court, the cases were heard together and the decrees of the circuit court were reversed at the October term, 1912, on the ground that the allegations were not sustained by the evidence, and the cases were remanded with directions to dismiss

the bills without prejudice. (Allen v. St. Louis, I. M. & S. Ry. Co., 230 U. S. 533.) After the cases were remanded to the district court (the circuit court having in the meantime been abolished), decrees were rendered in pursuance of the mandate dissolving the injunction and appointing a master to take an account and determine the claims for overcharges collected from passengers and shippers on the railroads during the time the injunctions were in force (Printed Record, 14). The appellants filed claims in each of the cases for the refund of the difference between the rates prescribed by the law of the State for the transportation of freight and those put in force by the appellees during the time the injunctions were in force.

The proceedings were consolidated and other claims were by the court allowed. Both parties desiring to appeal and being in doubt as to whether the appeal lay to this court or to the Circuit Court of Appeals, prayed and were allowed appeals to both courts which are now pending. This motion to dismiss is filed for the purpose of having the question of jurisdiction settled before the case is reached on its merits.

Appellants waive notice of said motion and agree that it be submitted without delay, to the end that the question involved may be disposed of at an early date,

and before the case is reached on its merits in this court or in the Circuit Court of Appeals.

John M. Moore,
Attorney for Appellants.

J. F. Loughborough,
Attorney for Appellees.

BRIEF IN SUPPORT OF MOTION TO DISMISS.

A somewhat similar question to that presented by this motion is pending in the cases of Arkadelphia Milling Co., Appellant, v. St. Louis Southwestern Ry. Co., and others, No. 845, and Jos. F. Hasty and others, v. St. Louis Southwestern Ry. Co., and others, No. 846, the appeals in those cases being consolidated here with these in one record. The point presented by this motion is that while the jurisdiction in the main suit involved the construction and application of the Constitution, the points presented by these appeals do not involve those questions, but present questions of general law, *i. e.*, the question of liability of the appellants for the overcharges in view of the fact that the district court by final decree, permitted their collection, and the further point that there is no liability for such overcharges collected after the final decree was rendered. The practice in such cases seems governed by the decision in Carey v. Houston & Texas Central Ry.

Co., 150 U. S. 170, 180, and McFadden v. U. S., 213 U. S. 288, 291, 293. As we understand the rule, an appeal will lie to this court direct from the district court only where the actual and substantial questions presented by the appeal involve the construction or application of the Constitution, and that the general rule that jurisdiction on appeal in an ancillary proceeding is related to the jurisdiction in the main case, does not apply. This arises from the construction of the act of Congress, bearing in mind that the Circuit Courts of Appeal were created to relieve this court. Thus, in cases like Rouse v. Letscher, 156 U. S. 47, where the jurisdiction of the court below in the main case was invoked on the ground of diverse citizenship, appeals in all ancillary proceedings should be to the Circuit Court of Appeals; and if the actual question presented on the appeal in the ancillary proceeding involved a construction of the Constitution, an appeal could be taken from the Circuit Court of Appeals to this court.

We appreciate that the rule has its disadvantages, and particularly so in a case like this, where part of the ancillary proceedings could be appealed direct to this court, but that part must be appealed to the Court of Appeals, and from there to this court, although some of the questions involved on the respective appeals are the same; and we realize that the rule will

not carry out the spirit of the Judicial Code and simplify proceedings; but because of separate appeals to separate tribunals will involve delay and expense, although this court is the court of last resort in all the appeals.

Respectfully submitted,

J. F. Loughborough,
Attorney for Appellees.

BRIEF IN RESPONSE TO MOTION TO DISMISS.

Counsel attempt to distinguish this case from Nos. 445 and 446 on the ground that while the jurisdiction of the main suit involved the construction and application of the Constitution the points upon which this case was decided in the court below did not involve those questions, but presented questions of general law.

They cite the case of Carey v. Houston & Texas Central Railway Company, 150 U. S. 170. In that case a bill was filed to set aside and vacate a decree rendered in a former case on the ground of fraud and want of jurisdiction. No question of jurisdiction arose in the instant case. The contention was that the question of jurisdiction was in issue because the bill attacked the jurisdiction of the circuit court in a former proceeding, which resulted in the decree appel-

lant was seeking to set aside. It was held that the case before the court was a separate and distinct case from the preceding case so far as the question of jurisdiction was concerned. That it is the jurisdiction of the court below over the particular case in which the appeal from the decree is prosecuted that justifies an appeal direct to the Supreme Court and no question of jurisdiction over a former suit, the decree in which is sought to be set aside, can be availed of to sustain an appeal to the Supreme Court from a decree of the circuit court in the later case.

This case seems to be distinguishable on the ground that the proceeding grew out of and was ancillary to the decree in the main case and was in fact only another step in a later stage of the original proceeding, the jurisdiction over which was dependent on the jurisdiction of the court over the main case, and the questions involved on the appeal relate solely to the effect to be given to the decree in the main case. Where there is no independent ground of jurisdiction over an ancillary proceeding, the jurisdiction on appeal will be ascribed to the jurisdiction in the main case.

In Rouse v. Fletcher, 156 U. S. 47, the right of appeal from the judgment of the Circuit Court of Appeals on the claim of an intervener in a foreclosure

proceeding, in which the jurisdiction depended on diverse citizenship, was asserted on the ground that the proceeding by intervention arose under the Constitution and laws of the United States because the cause of action was asserted against the receivers, as officers of the United States court, and arose as alleged by reason of negligence on their part in the course of their receivership. The court held that the intervention was entertained as belonging to that class of proceedings recognized as allowable where property sought to be charged is *in custodia legis*, and not on any other ground, and that jurisdiction of the circuit court was not to be ascribed to grounds independent of the jurisdiction in the main suit; and we submit the same rule should be applied in this case.

Gregory v. Van EE, 160 U. S. 643, 645.

Shulthis v. McDougal, 225 U. S. 561, 568.

Pope v. L. N. A. etc. Ry., 173 U. S. 573, 577.

Kentucky State Board of Control v. Lewis, 176 Fed. 556.

Respectfully submitted,

JOHN M. MOORE.

SUBJECT INDEX.

	Pages
Statement of Case	1-11
Specifications of Errors	12-13
Brief of Argument	14
Proceedings Not Opposed to Mandate	17-25
Liability on Bond	25
Restitution	26
Exception to Claim of Arkadelphia Milling Co.	26-31
Complainants Estopped from Questioning Reasonableness of Rate	31
Attitude of Courts When Asked to Review Reasonableness of Rates	32
Rate Fixing a Practical Question	33
Claim of J. F. Hasty & Sons Not Based on Movements in Interstate Commerce	35
Expectation to Sell and Ship Goods Beyond State Does Not Create Interstate Commerce	38

INDEX OF ALL CASES REFERRED TO.

	Pages
Allen v. St. L., I. M. & So. Ry. Co., 230 U. S. 553	3
Alabama & V. R. Co. v. R. R. Com., 203 U. S. 496	33
American Steel & Wire Co. v. Speed, 192 U. S. 500, 518	40
Bacon v. Illinois, 227 U. S. 504, 513	42
Baltimore Bldg. & Loan Assn. *et al.* v. Alderson, 99 Fed. 489	20
Barton v. Petit, 7 Cranch, 288	26
Bellamy v. St. L., I. M. & S. Ry. Co., 220 Fed. 876	22
Brown v. Houston, 114 U. S. 622, 629, 632	42

Cavender v. Cavender, 114 U. S. 464, 473 32
Coe v. Errol, 116 U. S. 517 ..... 38, 39
Chapman & Dewey Lbr. Co. v. J. L. C. & E. R. R. Co., 97 Ark. 300, 307 35
Chicago etc. Ry. Co. v. Wellman, 143 U. S. 339 33
C. M. & St. P. Ry. Co. v. Minnesota, 134 U. S. 418 460 30
C. M. & St. P. Ry. Co. v. Ackley, 94 U. S. 179 30
Ex parte Marks, 136 Fed. 168 21
General Oil Co. v. Crain, 209 U. S. 211 40
Heckers v. Fowler, 2 Wall. 123, 128 15
Hendrick v. Maryland, 235 U. S. 610 43
Houghton v. Meyer, 208 U. S. 149 ..... 24, 25, 26
Illinois Central Ry. Co. v. La. R. R. Com,, 236 U. S. 157, 163 43
In re City Bank, Petitioner, 153 U. S. 246, 251 21
In re Engelhard, 231 U. S. 646, 651 15
In re Howard, 9 Wall. 175 17
In re Louisville, 231 U. S. 639 23
In re Sanford Fork & Tool Co., 160 U. S. 247 19
Kane v. N. J., 242 U. S. 160 43
Kidd v. Pearson, 128 U. S. 1 41
Louisville v. Cumberland Tel. Co., 225 U. S. 430 23
Louisville No. & T. R. Co. v. Miss., 133 U. S. 587 33
Mackall v. Richards, 116 U. S. 45, 47 21
McClusky, Admr., v. M. & N. Ry. *et al.*, 243 U. S. 36 39
M. & M. R. R. v. Soutter, 2 Wall. 510 18
Minnesota Rate Cases, 230 U. S. 352 22

Missouri Rate Cases, 230 U. S. 474 22
Northwestern Fuel Co. v. Brock, 139 U. S. 216, 218 ..... 15, 26
Ohio R. R. Com. v. Worthington, 225 U. S. 101 43
Payne v. Houghton, 22 App. D. C. 234, 250 24
Peik v. C. & N. W. Ry. Co., 94 U. S. 164, 178 30
Penna. R. R. Co. v. Clark Coal Co., 238 U. S. 456, 468 43
Pittsburg & So. Coal Co. v. Bates, 156 U. S. 577 42
Railroad Co. v. McCarthy, 96 U. S. 258, 267 32
Railroad Com. of La. v. T. & P. Ry. Co., 229 U. S. 336 43
Reagan v. Farmers Loan & Tr. Co., 154 U. S. 362 30, 33
St. Louis, I. M. & S. Ry. Co. v. McKnight *et al.*, 244 U. S. 368 (220 Fed. 876) 11, 14, 25
St. Louis & San Francisco Ry. v. Barker, 210 Fed. 915 22
Sands v. Manistee R. Imp. Co., 123 U. S. 288 33
San Diego Loan etc. Co. v. Nat'l City, 174 U. S. 739 33
Santa Maria, 10 Wheat. 441, (7 Wheat. 490) 18
Sheffield etc. Ry. Co. v. Gordon, 151 U. S. 285 27
Smyth v. Ames, 169 U. S. 466, 524 33
Southern Pacific Terminal Co. v. Int. Com. Com., 219 U. S. 498 43
Speake v. U. S., 9 Cranch, 28, 37 32
Stone v. Farmers Loan & Tr. Co., 116 U. S. 307 33
Story v. Livingston, 13 Pet. 363 17
Supervisors v. Kennicott, 94 U. S. 498 19

Texas & Pac. R. R. v. Abilene Cot. Oil Co., 204 U. S. 426 29
T. & N. O. R. R. Co. v. Sabine Tram. Co., 227 U. S. 122 43
Tullock v. Mulvane, 184 U. S. 505 ..... 15, 16
United States v. E. C. Knight Co., 156 U. S. 1 41
Western Oil Refining Co. v. Lipscomb, 244 U. S. 346, 349 43

IN THE

Supreme Court of the United States

THE ARKADELPHIA MILLING COMPANY ..... *Appellant,*

v. No. 92.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY AND ST. LOUIS, IRON MT. & SOUTHERN RAILWAY CO. ..... *Appellees.*

JOSEPH F. HASTY, ELIPHALET F. HASTY AND WILLIAM C. HASTY, COMPOSING THE PARTNERSHIP OF J. F. HASTY & SONS ..... *Appellants,*

v. No. 93.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY AND ST. LOUIS, IRON MT. & SOUTHERN RAILWAY CO. ..... *Appellees.*

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO., *et al.* .....*Appellants,*

v. No. 94.

THE SOUTHERN COTTON OIL CO. .....*Appellee.*

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, *et al.* .....*Appellants,*

v. No. 95.

THE SOUTHERN COTTON OIL CO. .....*Appellee.*

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

BRIEF ON BEHALF OF APPELLANTS IN NUMBERS 92 AND 93 AND ON BEHALF OF APPELLEE IN NUMBERS 94 AND 95.

STATEMENT OF CASE.

The references herein to the transcript are to the pages of the print.

All of the above styled cases were consolidated in the court below and are here on an agreed statement

of the record. They are an outgrowth of the litigation entitled, Allen v. St. Louis, Iron Mountain & Southern Ry. Co., 230 U. S. 553.

That case involved the question whether railroad rates put in force by the duly constituted authorities of the State of Arkansas were so unremunerative to complainant railroad companies that they were confiscatory.

On the filing of the bill for an injunction (September 3, 1908) the circuit court granted a temporary injunction, and on final hearing (May 11, 1911) decreed a permanent injunction. From this decree the railroad commissioners appealed, assigning as error, and urging in this court, only the point that the finding of the court below was erroneous in its holding that the rates were confiscatory. The opinion of this court discussed only that point, and announced that the evidence failed to show confiscation. The mandate from this court to the court below contained the following provisions (Tr. 13):

"On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, reversed with costs, and that the said Robert P. Allen *et al.*, Commissioners, etc., recover against the said complainant Three Thousand One Hundred and

Two Dollars and Fifty-two Cents for their costs herein expended and have execution therefor.

"It is further ordered that this cause be, and the same is hereby, remanded to the District Court of the United States for the Eastern District of Arkansas, with directions to dismiss the bill without prejudice, June 16, 1913.

"You therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and decree of this court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding."

On the granting of the temporary injunction by the Circuit Court, the following order was entered (Tr. 6):

"It is further ordered that the complainant execute a bond to the United States of America in the penal sum of Two Hundred Thousand Dollars ($200,000.00) conditioned that said complainant shall keep a correct account showing, as respects the carriage of passengers and freight, the difference between the tariff actually charged and that which would have been charged had the rate inhibited been applied, showing the particular carriage in question and the stations between which the same occurred, and the name of the person affected as far as may be practicable, which record shall be made

and kept subject to the further order of this court, and further conditioned that if it should eventually be decided that so much of this order as inhibits the enforcement of the existing rates should not have been made, the said complainant shall, within a reasonable time, to be fixed by the court, refund in every instance to the party entitled thereto, the excess in charge over what would have been charged had the inhibited rates been applied, together with lawful interest and damages."

In response to this order, each of complainants executed and filed a bond in the following form (Tr. 6 and 7):

"Know All Men By These Presents, that the above complainant as principal, and the United States Fidelity and Guaranty Company, a corporation of the State of Maryland, as surety, are held and firmly bound unto the United States of America in the penal sum of Two Hundred Thousand Dollars ($200,000.00), well and truly to be paid in lawful money of the United States, for the payment of which they bind themselves, their successors and assigns firmly by these presents.

"Signed with our hands, and sealed with our seals and dated this 11th day of September, A. D. 1908.

"This bond is made upon the following conditions, to-wit:

"Whereas, the court in the above entitled cause, made an order on the 3rd day of September, A. D. 1908, granting a restraining order and providing among other things as follows, to-wit:

"It is further ordered that complainant execute a bond to the United States of America in the penal sum of Two Hundred Thousand Dollars ($200,000.00), conditioned that said complainant shall keep a correct account showing, as respects every carriage of passengers or freight, the difference between the tariff actually charged and that which would have been charged had the rate inhibited hereby been applied, showing the particular carriage in question and the stations between which the same occurred, and the name of the person affected as far as may be practicable, which record shall be made and kept subject to the further order of this court, and further conditioned that if it should eventually be decided that so much of this order as inhibits the enforcement of existing rates should not have been made, that said complainant shall, within a reasonable time, to be fixed by the court, refund in every instance to the party entitled thereto, the excess in charge over what would have been charged had the inhibited rates been applied, together with lawful interest and damages.

"Now, if the above named complainant, St. Louis, Iron Mountain and Southern Railway Company, shall

well and truly keep and perform all and singular the conditions of said restraining order as above set forth, then this obligation shall be null and void, otherwise to be and remain in full force and effect.

"In Testimony Whereof, the above bounden principal has caused its corporate name to be hereunto subscribed by its Vice President and its corporate seal to be hereunto affixed and duly attested, and said surety has caused its corporate name to be hereunto subscribed, and its corporate seal to be hereunto affixed, by Sam W. Reyburn and D. H. Cantrell, its duly authorized attorneys in fact for this purpose this 11th day of September, A. D. 1908" (Tr. 10 and 11).

Later an additional bond was required by the Circuit Court in the sum of $800,000.00, signed by the St. Louis, Iron Mountain & Southern Railway Company, without sureties, and a similar additional bond was required of the St. Louis Southwestern Railway Company in the sum of $300,000.00, without additional sureties. The order requiring said additional bonds expressly provided that they "shall be in addition to the bond heretofore executed, and not in lieu thereof" (Tr. 9).

On return of the case from this court, the district court entered a decree in conformity with the mandate, dismissing the cause without prejudice, and referring

to a master, appointed by the district court, the matter of ascertaining the damages sustained by the granting of the temporary and permanent injunctions. This order directed that notice be given of the time in which claims should be filed with the master, and that in making his report the master should report separately all claims which arose under the temporary injunction before the additional bond was filed, which embraced the period between September 3, 1908, to July 5, 1909; those which arose after the additional bond was given, and before final decree, July 5, 1909, to May 11, 1911, and all those which arose after the final decree, May 11, 1911, to July 18, 1913. In making his report the master reported separately the claims that arose in these periods, designating them Series A, B and C, respectively (Tr. 17).

On December 2, 1914, the master filed his report, showing in detail the claims filed and those allowed and those disallowed, as directed in the order of reference. In that report the claim of appellee, Southern Cotton Oil Company against the St. Louis, Iron Mountain & Southern Railway Company was allowed in the following amounts (not including interest):

In Series A	$ 6,401.10
In Series B	12,671.20
In Series C	13,000.63
Total	$32,072.93

The claims of the same appellee were allowed against appellant, St. Louis Southwestern Railway Company in the following amounts (not including interest):

In Series A	$ 756.19
In Series B	1,795.34
In Series C	2,210.64
Total	$4,762.17 (Tr. 15).

The claims of the appellant, Arkadelphia Milling Company, were allowed by the master in the aggregate sum of $11,820.42 against the St. Louis, Iron Mountain & Southern Railway Company, as were also the claims of the appellant, J. F. Hasty & Sons against St. Louis, Iron Mountain & Southern Railway Company in the aggregate sum of $16,336.33 and against the St. Louis Southwestern Railway Company in the aggregate sum of $1,080.40 (Tr. 16, 17).

The exceptions of the Railway Companies to the allowance of the claims of the Southern Cotton Oil Company were only on the ground that the final decree entered by the circuit court relieved them and the sureties on their bond from all liability by reason of the granting of the temporary injunction, and an exception that there was no liability on the bonds for the claims allowed in Series C, being those that arose after final decree was entered in the cause.

There was no dispute of the correctness of the amounts allowed by the master to the Southern Cotton Oil Company.

The court overruled each of said exceptions, and sustained the allowances made by the master, rendering judgment against the respective railway companies and their surety, the United States Fidelity & Guaranty Company, for these amounts with interest at 6 per cent per annum, from an average date the parties agreed would be fair (Tr. 16).

To the allowance by the master in favor of the Arkadelphia Milling Company, the Railway Companies filed an exception on the ground that the rates considered by the master appropriate to this claim were invalid because they discriminated against shippers who do not enter into contracts with the carrier for re-shipment of the finished product of the rough material to which the rates would apply (Tr. 25).

The court sustained this exception and disallowed the claim of the Arkadelphia Milling Company (Tr. 25).

The railway companies excepted to the allowance by the master of the claims of J. F. Hasty & Sons on the ground that the movement of the rough material into the mills of J. F. Hasty & Sons and the subsequent forwarding of the finished product to points beyond the State of Arkansas constituted the movement to the

mills interstate commerce, and the State rates applied by the master were inapplicable.

The district court disallowed the claim of J. F. Hasty & Sons on this ground.

No exception on this ground was filed against the claim of the Arkadelphia Milling Company, and this point is not involved on its appeal (Tr. 25).

The District Court rendered final decrees in accordance with its respective holdings (Tr. 3).

Some persons who had claims against the St. Louis, Iron Mountain & Southern Railway Company for overcharges during the period the injunction was in force, brought suit in the State court against it for the amount of their claims, and on petition by the St. Louis, Iron Mountain & Southern Railway Company to the District Court, the parties were permanently enjoined from prosecuting these suits.

After appeal to the Circuit Court of Appeals for the Eighth Circuit, the case reached this court, and is reported under the style of St. Louis, Iron Mountain & Southern Ry. Co. v. McKnight, et al., 244 U. S. 368. The Circuit Court of Appeals (220 Fed. Rep. 876) reversed the holding of the lower court, and held that parties having claims had the right to sue the railway companies in the State court, or to sue therein on the

injunction bond. This court affirmed the decision of the Circuit Court of Appeals.

SPECIFICATION OF ERRORS ON BEHALF OF APPELLANTS IN CASES 94 AND 95.

Appellant, Arkadelphia Milling Company, specifies that the court below was in error in sustaining the following exception of the railway companies (Tr. 25):

"2. That the provisions of Distance Tariff No. 3, Item 79, regulating rough material rates inbound, are in the alternative, and are also discriminatory against shippers who do not enter into contracts with the carrier with reference to the re-shipment of the specified percentages of the finished product."

and in dismissing its claim (Tr. 27).

Appellant, J. F. Hasty & Sons, specifies that the district court was in error in its ruling sustaining the following exception filed by the railway companies (Tr. 25):

"1. That the movement of said rough material into the milling point, and the subsequent forwarding of the finished product to points beyond the State of Arkansas, constituted interstate commerce, and the rough material rates of the defendants are not applicable."

and that the District Court erred in disallowing the claim of this appellant on that ground and dismissing its intervention (Tr. 33).

These rulings of the District Court were duly assigned as errors in the assignments of errors and prayers for appeals (Tr. 27, 33).

BRIEF OF ARGUMENT.

The doubt mentioned by this court in passing to the decision in St. Louis, Iron Mountain & Southern Railway Company v. McKnight *et al.*, 244 U. S. 368, that the lower court had power under the mandate to render judgment on the bonds, merits our first remarks.

When the mandate reached the court below, the situation it had to deal with was this: When its injunction order was issued it required that complainants keep correct account of the difference between the rates restrained and those charged, with a description of each shipment and the name of each shipper, and give a good bond that if it was eventually decided that the injunction was wrongfully issued, it would refund in each instance, in a reasonable time to be fixed by the court, to the party entitled thereto, the excess charges. The filing of the bond should precede the issuance of the injunction. The bonds were given and their terms expressly consented to this arrangement. A standing order of the court in force when the injunction was issued, provided that on such bonds summary judgments should be rendered by that court (Tr. 25). By virtue of the wrongful order of the court, complainants had collected large sums of money from shippers which, in equity, they had no right to retain and which

they and their surety had expressly agreed to return promptly. The court had power to make its rule in regard to recovery on injunction bonds given in proceedings before it. (Hawkers v. Fowler, 2 Wall. 123, 128.) The proper construction of the bond was for the United States courts to finally settle. (Tullock v. Mulvane, 184 U. S. 505). It had inherent power to correct the wrong its order had occasioned, and compel restitution or make other appropriate orders to remedy the harm done. (Northwestern Fuel Co. v. Brock, 139 U. S. 216, 218). The several parties overcharged by virtue of the wrongful injunction were before the court by representation (In Re Engelhard, 231 U. S. 646, 651); but their respective claims had not been in issue, in fact, it had just been decided that the injunction was wrongfully issued.

This court had before it on appeal only the question of the right to the injunction; this was the only question presented to this court, and was the only question considered by it, as shown by its opinion. The decree of injunction was reversed on the ground that it was not shown that the tariff complained of was unreasonable, and the court below was directed to dismiss the bill without prejudice. Could it be said this court had considered and impliedly denied the power of the district court to compel restitution of the funds its wrongful order had permitted complainants to collect,

and proceed against the security complainant had agreed with the court, should respond to this very demand?

The direction was to dismiss the bill without prejudice, and that such further proceedings be had in the cause in conformity with the opinion as ought to be had according to law, right and justice.

The claimants against the bonds would be many and the average amounts of each would be small. Separate suits would be expensive and the question of liability on the bonds for the United States courts to decide. (Tullock v. Mulvane, supra). The terms of the bonds, to pay "within a reasonable time to be fixed by the court," if sued on in other than the District Court, held out a distinct promise of delaying litigation. The closing language of the mandate was appropriate to meet the very situation before the district court and to authorize the subsidiary proceedings undertaken:

"You therefore are commanded that such execution *and further proceedings* be had *in said cause* in conformity with the opinion and decree of this court, as, according to right and justice and the laws of the United States, *ought to be had*, the said appeal notwithstanding" (italics ours).

THE PROCEEDINGS WERE NOT OPPOSED TO THE MANDATE OR THE OPINION, BUT ON THE CONTRARY WERE A JUST EXECUTION OF BOTH.

If it is said the subsidiary proceedings were impliedly prohibited by the mandate, the argument can only be advanced by giving the order to dismiss the most narrow meaning, disregarding the spirit of the appeal proceedings and ignoring the closing language of the mandate.

It is well settled by the decisions of this court that its mandates shall be construed reasonably with reference to the subject matter of the litigation, the opinion in the case, and in a manner not to cause injustice.

Said the court in Story v. Livingston, 13 Pet. 363:

"The mandate is to be interpreted according to the subject matter to which it has been applied, and not in a manner to cause injustice."

And the following in In Re Howard, 9 Wall. 175:

"But the obedience thus due is not blind obedience, acting upon the letter of the judgment affirmed or mandate ordered, without any consideration of the rights of persons not parties to the litigation in which the judgment was entered."

In M. & M. R. R. v. Soutter, 2 Wall. 510, the court said:

"This construction of the mandate can not be sustained. * * * * To suppose that this court intended, in addition to these five years, to withhold the recovery of complainants for the additional uncertain period which might be necessary to litigate the receiver's accounts, is to impute to it a manifest injustice" (pages 519, 520).

A similar point to this was before the court in the Santa Maria, 10th Wheat. 441. In that case it appeared that in a prior case (7th Wheat 490) a general decree of restitution was awarded in favor of the libelant and a mandate issued from this court to carry that decree into effect. In that proceeding the claim of one of the claimants of the vessel was rejected. This claimant applied to the court below, asserting that he had incurred costs and expenses in connection with the custody of the property that aggregated a considerable amount. These claims were rejected and from this decree an appeal was taken. It was asserted in this court that the contention was disposed of by the mandate on the former appeal. Of this contention the court said (page 442):

"But upon all proceedings to carry into effect the decree of the court, the original proceedings are al-

ways before the court, so far as they are necessary to determine any new points or rights in controversy between the parties, which were not terminated by the original decree. The court may, therefore, inspect the original proceedings, to ascertain the merits or demerits of the parties, so far as they bear on the new claims, and must decide upon the whole examination what its duty requires."

In Re Sanford Fork & Tool Co., 160 U. S. 247, the court said (page 256):

"The circuit court may construe and decide any matters left by the mandate of this court; and the decision of such matters can be reviewed by a new appeal only."

In Supervisors v. Kennicott, 94 U. S. 498, it appeared that the mandate remanded the cause, "with directions to award a new trial," and as sent down commanded "that such execution and further proceedings be had, in conformity with the opinion and decree of this court as, according to right, etc., ought to be had."

In holding that the term "new trial" should not be given this significance, the court remarked: "Our mandates are to be interpreted according to the subject matter of the proceedings heard, and, if possible, so as not to cause injustice" (page 499).

In Baltimore Bldg. & Loan Assn. *et al.* v. Alderson, 99 Fed. 489, the Circuit Court of Appeals for the Fourth Circuit had before it an appeal from proceedings on one of its mandates, issued in a case in which it was held that the lower court had no jurisdiction and from which it appeared the lower court had been reversed and the cause remanded with specific instructions "to vacate the order ratifying the sales made by the receiver, and the order distributing the purchase money, and that it direct that the payments made by the purchasers be returned to them, and that the decrees for sale be set aside and the bills dismissed." When the mandate was entered in the lower court the sureties on the receiver's bond intervened and prayed that the money paid by them into the registry of the court be returned to them.

In disposing of this, the court said (page 492):

"Such is the general rule. But it must be observed that the question which came before the circuit court had never been presented to this court, and, in the nature of things, could not have been presented to it at the former hearing."

and held (page 493):

"If, therefore, the petitioners are right in their contention that they had paid this money into court under a void order and an invalid bond, the circuit court

had jurisdiction, notwithstanding the dismissal of the bill for want of jurisdiction, to correct by its own order that which, according to the judgment of its appellate court, it had no authority to do in the first instance. The circuit court was not in error in entertaining the petitions."

In In Re City Bank Petitioner, 153 U. S. 246, 251, the court held the lower court was not in error in adding interest in a judgment directed by this court, as it was apparent that the question of interest had not been considered and disposed of here.

In Ex parte Marks, 136 Fed. 168 (C. C. A. 9th Circuit), the mandate contained the same closing language as did the one in this case. The court held it authorized the correction of a mistake in interest allowed.

In Mackall v. Richards, 116 U. S. 45, 47, it appears that this court issued a mandate on the point presented to it without dealing further with the record on the appeal. In denying the contention that the decree as entered by the lower court did not conform with the mandate, this court said:

"As the appeal was taken for the sole purpose of correcting the description, it was proper to construe the mandate as in effect nothing more than an order for such a correction."

The Circuit Court of Appeals for the Eighth Circuit, must have expressly considered this point in this case in Bellamy v. St. Louis, I. M. & S. Ry., 220 Fed. 876, saying (page 878):

"The order is too broad. The court had jurisdiction of all liabilities arising out of the bonds made pursuant to its orders. It could appoint a master, before whom all claims based on these bonds should be heard, and to restrain actions in other jurisdictions to collect such claims. The bonds were judicial. The orders requiring them to be given retained the jurisdiction of the court to ascertain and enforce liabilities arising under them. That power probably existed independently of such reservation."

The district court for Missouri, in a similar case, St. Louis & San Francisco Ry. v. Barker, 210 Fed. 915, had before it this identical question and the mandate from this court (Missouri Rate Cases, 230 U. S. 474) directed that the bill be dismissed without prejudice. The court considered that this authorized it to dispose of any claims for reimbursement and to appoint a master for that purpose, authorizing parties to proceed in the State court if they so desired.

In the Minnesota Rate Cases, 230 U. S. 352, the decree and mandate was the same as in this case.

In Louisville v. Cumberland Telephone Co., 225 U. S. 430, the decree of the lower court was reversed without prejudice (page 436), and the cause was remanded "for further proceedings not inconsistent with the opinion of this court." On this authority the lower court did not dismiss the case but retained the bill while an experiment was made with the rates fixed by the city ordinance. A master was appointed to ascertain and report the earnings, etc., of the telephone company under those rates. A petition for mandamus was filed in this court in which complaint was made that the lower court had no power under the mandate to continue the litigation while the experiment was made. (In re Louisville, 231 U. S. 639).

It was conceded in the argument that the court had power to appoint a master to accomplish restitution of the excess rates collected by virtue of the wrongful injunction (page 640). The point urged upon and considered by this court was whether the lower court had power under the mandate to retain the cause for an experiment with the rates, as shown by the following excerpt from the opinion:

"Due return to the rule was made. It is, in effect, that the court considered the opinion and decree of this court permitted a discretion to retain the case for an actual experiment of the rates, and, thus considering it, made the order of March 10, 1913.

"We think the discretion was properly exercised. The terms of the mandate permitted further proceedings" * * * (p. 645).

It would seem this case is ruled by Houghton v. Meyer, 208 U. S. 149, 154, which is a precedent on the practice sustained by this court.

In that case there was a bill for injunction against the Postmaster General to restrain him from putting in force certain postage rates. The proceedings were in the Supreme Court of the District of Columbia. A temporary injunction was issued on a bond given. On final hearing the injunction was made permanent. On appeal to the Court of Appeals, the decree of the court below was reversed with the following directions:

"In accordance with those conclusions, we must reverse the decree appealed from, with cost, and remand the cause to the court below with directions to dismiss the bill. It is so ordered." (Payne v. Houghton, 22 App. D. C., 234, 250.)

An appeal was taken to this court, and there the decree of the Court of Appeals was affirmed. On receipt of the mandate from this court, the Court of Appeals issued its mandate, ordering the court below to dismiss the bill. The bill was dismissed by the court below, but a motion to assess damages on the injunction bond was denied, as the court was of the opinion

that the bond was not liable. This ruling was appealed to the Circuit Court of Appeals, and there the decree was reversed and damages allowed for the full time the rates were restrained. This decree was reversed by this court, and a recovery permitted on the bond up to the time of the final decree in the court of original jurisdiction. The case was remanded, with directions to carry out this mandate.

LIABILITY ON THE BOND.

St. L., I. M. & S. Ry. v. McKnight, 244 U. S. 368, expressly holds that the bonds were not liable for claims accruing after the decree of permanent injunction had been entered by the lower court. This embraces the claims in Series C.

We accept this ruling as controlling.

The right of the claimants to recover for their claims in Series A and B is so like the right sustained in Houghton v. Meyer, 208 U. S. 149, that the point merits no further citation. The condition of the bond was express that the parties would repay to those entitled thereto the several amounts they collected by virtue of the temporary injunction. The additional bond, without sureties, required by the court, expressly provided that it was in addition to, and not in lieu of, the former bond.

The reversal of the decree necessarily reversed the provision of it releasing the injunction bond.

Barton v. Petit, 7 Cranch 288.

Houghton v. Meyer, *supra*.

RESTITUTION.

The judgments against complainants for the amount of the claims in Series "C," not sustainable against the bond are sustainable against complainants on the principle of restitution.

Northwestern Fuel Co. v. Brock, 139 U. S. 216, 218.

EXCEPTION TO CLAIM OF ARKADELPHIA MILLING COMPANY.

This claim is based upon what is termed in the record the rough material rates. These rates were available where the shipper transported over the line of the carrier a certain per cent of the product manufactured from the rough material.

The master found that these conditions were complied with and allowed the claim of this claimant. The exception of the railroad companies, which the court below sustained, was that the rates fixed by the Arkansas Railroad Commission in the tariff were unlawful because they discriminated between those persons who

made contracts with the carrier for the reshipment over its line of the manufactured product, and those who did not. As this exception only called to the attention of the court and the master the point that the discrimination was between those who made contracts and those who did not, it is perceived that the scope of the exception was very narrow. The tariff does not require shippers otherwise entitled to those rates to sign any particular form of contract with the carrier. They are only required to ship out the specified per cent of the manufactured products, the details of how security for this may be accomplished being left to arrangements between the carrier and the shipper.

The tariff authorizes the carriers to enter into suitable contracts with the shippers (Tr. 18, Item C.), the form of the contract to be approved by the Commission. Neither of complainant railroad companies submitted a form of contract to the Commission for its approval (Tr. 23). But they did as they had a right to do, and made such arrangements with the respective shippers to secure transportation of the finished product as the situation demanded. The exception called attention to nothing beyond this, and in sustaining it, the court below was in error.

In Sheffield etc. Ry. Co. v. Gordon, 151 U. S. 285, the court said (page 290):

"Proper practice in equity requires that exceptions to the report of a master should point out specifically the errors upon which the party relies, not only that the opposite party may be apprised of what he has to meet, but that the master may know in what particular his report is objectionable, and may have an opportunity of correcting his errors or reconsidering his opinions."

If it is contended that the exception was broader and was sufficient to raise the point that the rates themselves were unequal and discriminated between those who were entitled to the rates under the tariff and those who were not, we dispute the assertion. However, viewing it from that standpoint, the position of the railway companies is untenable.

In the first place the argument is inadmissible in this proceeding. The tariff of the Arkansas Railroad Commission contained a complete system of rates applying to different commodities, different situations, with different kinds of hauls. In testing its equality, and therefore its reasonableness, it can only be properly inquired into as a whole.

This proceeding only involves a question whether this claimant is entitled to recover its excess payments. These payments are admittedly the difference between the tariff rates prescribed by the Arkansas Railroad

Commission, and the rates charged under protection of the injunction. Whether the rates in the tariff on any shipment or shipments are unreasonable on any account is not a question that can be litigated between the carrier and the shipper on the respective shipments. The shipper must rely on the legislative rate fixing power of the Railroad Commission to give him a reasonable rate, and so must the carrier, and if the courts are appealed to on the ground that any particular rate or rates are unreasonable, it must be in a proceeding against the rate fixing power. If the shipper and carrier could dispute in court over any rates in the tariff, it is readily realized that endless confusion would be brought about and the entire rate fixing plan of the state would be disjointed and destroyed.

In Texas & Pac. R. R. v. Abilene Cotton Oil Co., 204 U. S. 426, a similar question was before the court. In noticing the results of such a rule, the court said (page 440):

"This suggestion, however, is manifestly without merit, and only serves to illustrate the absolute destruction of the act and the remedial provisions which it created which would arise from a recognition of the right asserted. For if, without previous action by the Commission, power might be exerted by courts and juries generally to determine the reasonableness of an

established rate, it would follow that unless all courts reached an identical conclusion a uniform standard of rates in the future would be impossible, as the standard would fluctuate and vary, dependent upon the divergent conclusions reached as to reasonableness by the various courts called upon to consider the subject as an original question."

C. M. & St. P. Ry. Co. v. Minnesota, 134 U. S. 418, 460.

The rule announced in the concurring opinion of Justice Miller in the last cited case was approved and applied in In Re Engelhard, 231 U. S. 651.

Reagan v. Farmers Loan & Tr. Co., 154 U. S. 362.

Peik v. C. & N. W. Ry. Co., 94 U. S. 164, 178.

C., M. & St. P. Ry. Co. v. Ackley, 94 U. S. 179.

Amendment Number Four to the Constitution of Arkansas declared adopted January 13, 1899, created a railroad commission and authorized the Legislature to give them power to fix rates. The Legislature gave them large powers to fix rates by an act approved March 11, 1899. The powers conferred were similar to, probably greater, than those conferred by Congress on the Interstate Commerce Commission.

The acts of the Arkansas Legislature provided for notice to the carriers before a rate was fixed or a tariff changed, and a posting of all tariffs before they became effective. (Kirby's Digest, Sec. 6802, 6810). They provided for a hearing of complaints before the commission (Kirby's Digest, Sec. 6818). They provided that in actions between railroad companies and private parties the rates fixed by the commission should control:

"In all actions between private parties and railroad companies brought under the law establishing a railroad commission and defining its powers and duties, the rates, charges, orders, rules, regulations and classifications prescribed by said commission before the institution of such action shall be held, deemed and accepted to be reasonable, fair and just, and in such respects shall not be controverted therein." (Kirby's Digest, Sec. 6809).

COMPLAINANTS ARE ESTOPPED FROM QUESTIONING THE REASONABLENESS OF THE RATE.

The railroad companies obtained the injunction in the court below upon the express condition set forth in the injunction bond that, "The complainants shall keep a correct account showing as respects the carriage of freight and passengers, the difference between the

amount actually charged and that which would have been charged had the inhibited rates been applied, and furtlier conditioned that if it should eventually be decided that so much of this order as inhibits enforcement of the rates prescribed by the Railroad Commission of the State of Arkansas in distance tariff No. 3 and the two cent per mile passenger rate prescribed by the Statute of 1907, should not have been made, that the complainant shall refund to the owners and holders of the certificates issued by it, the excess charges as shown by the same" (Tr. 6).

This obligation was unqualified, and the relief desired by the railroad companies was obtained from the court below on the faith of it. They should not be heard to say, when the time for payment arrives, that some of the rates in the tariff, on the basis of which they agreed to refund excess charges, were rates that the railroad commission should not have made.

Speake v. U. S., 9 Cranch 28, 37.

Cavender v. Cavender, 114 U. S. 464, 473.

Railroad Co. v. McCarthy, 96 U. S. 258, 267.

ATTITUDE OF COURTS ON SUCH QUESTIONS.

As the basis for rate making peculiarly depends upon the needs and customs of the community, the courts would be slow to dispute the reasonableness of

rates fixed by the legislative department of the State, or its authorized agencies.

Stone v. Farmers Loan & Tr. Co., 116 U. S. 307.

Sands v. Manistee R. Imp. Co., 123 U. S. 288.

Louisville No. & T. R. Co. v. Miss., 133 U. S. 587.

Alabama & V. R. Co. v. R. R. Commission, 203 U. S. 496.

San Diego Loan, etc., Co. v. Nat'l City, 174 U. S. 739.

Chicago, etc., R. Co. v. Wellman, 143 U. S. 339.

Reagan v. Farmers' Loan, etc., Co., 154 U. S. 362.

Smyth v. Ames, 169 U. S. 466, 524.

RATE FIXING IS A PRACTICAL QUESTION AND IS NOT SUSCEPTIBLE OF NICE SCIENTIFIC REFINEMENTS.

The various interests of the carriers, as well as the public, must be known to, and carefully considered by, the rate making body, in order that an equal system of rates may be fixed. There are many differences in rates applied to different commodities, because of dif-

ferences in value, differences in bulk, and many other differences. There is the difference in a car load and less than a car load, the difference in minimum weights, the difference because of competition, and the difference because of the different industries served.

A rate on a certain commodity, so high that, from a practical standpoint, it would be prohibitory, would be unwise. It is a matter of common knowledge that carriers, at first, and, later, rate making bodies, have uniformly fixed their rates so that raw material could be moved to factories. If the rate did not permit this movement, the factories could not exist and the carriers would not realize the income from the manufactured product. The first of these classes of rates, in a sparsely settled country, is the forest product rates, of which the rate complained of is an illustration.

It is presumed that this rate is appropriate to the needs of the carrier and those who embark on development of the country. Without factories to manufacture the forest products, they would not be manufactured, and the only transportation of them would be for occasional orders that would be negligible, both to the carriers and to the public.

On the other hand, if the forest products can move to the mills and factories on a reasonably low rate, the people would be encouraged to build factories, and the

carrier would receive a profit from the transportation of the manufactured product, even though he moved the raw material at cost, or less. The benefits to the public in the development of the country, the erection of factories, and the benefits to the carrier are obvious.

The rough material rates now assailed are of this kind. They apply equally to all in the class dealt with.

The Supreme Court of Arkansas had occasion to consider and sustained the rough material rates in Chapman & Dewey Lbr. Co. v. J. L. C. & E. R. R. Co., 97 Ark. 300, 307, where the rates were directly attacked.

Since about the year 1898 similar rough material tariffs have been in force in Arkansas (Tr. 25).

THE CLAIM OF J. F. HASTY & SONS NOT BASED ON MOVEMENTS IN INTERSTATE COMMERCE.

The exception to the master's report allowing the claims of J. F. Hasty & Sons, sustained by the court below was that the shipments, to which the master had applied the rates named in the Arkansas tariff, were movements in interstate commerce.

The commodities were raw material, consisting of "bolts, rough staves or rough heading." In the woods trees would be cut down and sawed into lengths, and these lengths would be split into quarters or a less

fraction of the piece. Bolts were the pieces into which a length or cut was split, from which several barrel staves, headings or hoops could be made. Rough staves or rough heading were pieces of the size from which but one stave or piece of heading could be made. They were the lengths of rough timber cut in the woods for convenient transportation to the mills, at which a particular product would be manufactured (Tr. 23). When the rough material reached the mill they would be manufactured into finished staves, headings or hoops, and in this condition shipped to whoever purchased them.

When the rough material left the woods, a bill of lading was issued from the woods to the mill. When it reached the mill and was finished or manufactured into some or all of the articles described, it was stacked in the yards or placed in kilns to dry. The process of manufacturing and trying occupied several months, the reasonable average being stated to be five months. From this stock of finished material claimants made sales. At the time the rough materials were shipped to the mills the mills did not know to whom they would sell the finished product, or to what point it would be shipped; but did know there was little market for the finished product in the State of Arkansas, and expected they would sell 95 per cent of the finished articles and ship them to points outside the State of Arkansas. When or to whom they would sell them they did not

know. When the manufactured product was sold and shipped out, it took the regular rate for the shipment of that commodity from the mill to destination, and an ordinary waybill between those points was issued. The rate from the woods to the mill on the rough material, plus the rate from the mill to destination of the manufactured article, was substantially more than the through rates would be on a shipment of the same manufactured article from the woods to the final destination of the manufactured product if the movement had been continuous.

We respectfully submit that the movement of the rough material from the woods to the mill had none of the characteristics of, nor was it, a movement in interstate commerce.

There was no continuous movement. When the rough material left the woods no one knew where the manufactured product might be shipped. After the product was manufactured, it remained in the mill an average of five months, and during that time the owners sought its market and sold it. It came to rest at the mill, and where it would eventually go no one could foretell.

If previous experience in the business was sufficient to indicate that the conditions of the market were such, that 95 per cent of the manufactured product

would be shipped out of the State, this is so of a great many of the products in the Southern and Western States. When the cotton buyer in the Southern States purchases cotton and has it shipped to his warehouse, he knows that the market for nearly all of it is beyond the State. So does the manufacturer of cottonseed oil and many other commodities. It has never been contended that the initial movements of this raw material within the State are movements in interstate commerce.

AN EXPECTATION TO SELL AND SHIP GOODS BEYOND THE STATE DOES NOT CREATE INTERSTATE COMMERCE.

As the movement from the mill to the destination of the manufactured product was not a continuation of the movement to the mill, it would seem the only idea that can be advanced to indicate that the movement of the rough material was a movement in interstate commerce, is the idea that as the manufacturer expected his product would be sold to parties outside the State and shipped there, this expectation of itself constituted the movement from the woods interstate commerce. This idea has been argued before this court at various times in varying situations and always held by this court unsound. In the tax case of Coe v. Errol, 116 U. S. 517, the contention was denied, the court saying (page 525):

"Do the owner's state of mind in relation to the goods, that is, his intent to export them, and his partial preparation to do so, exempt them from taxation? This is the precise question for solution. * * *

"When the products of the farm or the forest are collected and brought in from the surrounding country to a town or station serving as an *entrepot* for that particular region, whether on a river or a line of railroad, such products are not yet exports, nor are they in process of exportation, nor is exportation begun until they are committed to the common carrier for transportation out of the State to the State of their destination, or have started on their ultimate passage to that State. * * *

"Carrying it from the farm, or the forest, to the depot, is only an interior movement of the property, entirely within the State, for the purpose, it is true, but only for the purpose, of putting it into a course of exportation; it is no part of the exportation itself. Until shipped or started on its final journey out of the State its exportation is a matter altogether *in fieri*, and not at all a fixed and certain thing" (page 528).

The announcement of the rule in the second quotation from Coe v. Errol was expressly approved in McClusky, Admr., v. M. & N. Ry. *et al.*, 243 U. S. 36.

General Oil Co. v. Crain, 209 U. S. 211, involved the validity of a charge imposed under authority of the State of Tennessee for the inspection of oil shipped to Memphis and there held in tanks "a few days" (page 213) to fill orders for shipments into Arkansas.

After reviewing the decisions on the question, the court held the "oil was not property in interstate commerce," saying (page 231):

"Like comment is applicable to plaintiff in error and its oil. The company was doing business in the State, and its property was receiving the protection of the State. Its oil was not in movement through the State. It had reached the destination of its first shipment, and it was held there, not in necessary delay or accommodation to the means of transportation, as in State etc. v. Engle, *supra*, but for the business purpose and profit of the company."

American Steel & Wire Co. v. Speed, 192 U. S. 500, 518, presented a situation where appellant shipped goods to Memphis, Tenn., where they were held until resold in Tennessee and adjoining States. It was contended that while the goods were in Memphis, they were not subject to taxation by the State of Tennessee because they were moving in interstate commerce, but the court said (pages 518, 519):

"With these facts in hand, we are of opinion that the court below was right in deciding that the goods were not in transit, but, on the contrary, had reached their destination at Memphis, and were there held in store at the risk of the Steel Company, to be sold and delivered as contracts for that purpose were completely consummated."

United States v. E. C. Knight Company, 156 U. S. 1, was a suit brought under the anti-trust law of the United States to cancel a contract to acquire control of a sugar refinery in the State of Pennsylvania. It was urged that, as practically all of the output of the refinery was shipped beyond the State, the expectation or intent of the owners made the manufactured articles articles in interstate commerce. Of this argument the court said (page 13):

"The fact that an article is manufactured for export to another State does not of itself make it an article of interstate commerce, and the intent of the manufacturer does not determine the time when the article or product passes from the control of the State and belongs to commerce."

In Kidd v. Pearson, 128 U. S. 1, the court said (page 21):

"If it be held that the term (commerce) includes the regulation of all such manufactures as are intended

to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest, and the cotton planter of the South, plant, cultivate and harvest his crop with an eye on the prices at Liverpool, New York and Chicago? The power being vested in Congress and denied to the States, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform and vital interests—interests which in their nature are and must be local in all the details of their successful management.

"It is not necessary to enlarge on, but only to suggest, the impracticability of such a scheme, when we regard the multitudinous affairs involved, and the almost infinite variety of their minute details."

Brown v. Houston, 114 U. S. 622, 629, 632.

Pittsburg & So. Coal Co. v. Bates, 156 U. S. 577.

Bacon v. Illinois, 227 U. S. 504, 513.

The value of the cited cases is not impaired but made clearer by those cases decided by this court, where the form the parties gave the transaction indicated the transit had ended but the substance showed the real transaction was a movement in interstate commerce, such as:

Southern Pacific Terminal Co. v. Int. Com. Com., 219 U. S. 498.

Ohio R. R. Commission v. Worthington, 225 U. S. 101, 108.

T. & N. O. R. R. Co. v. Sabine Tram. Co., 227 U. S. 122.

R. R. Com. of La. v. T. & P. Ry. Co., 229 U. S. 336.

Western Oil Refining Co. v. Lipscomb, 244 U. S. 346, 349.

Penna. R. R. Co. v. Clark Coal Co., 238 U. S. 456, 468.

Ill. Central Ry. Co. v. Louisiana R. R. Com., 236 U. S. 157, 163.

Hendrick v. Maryland, 235 U. S. 610.

Kane v. N. J., 242 U. S. 160.

Respectfully submitted,

W. E. Hemingway,
G. B. Rose,
D. H. Cantrell,
J. F. Loughborough,

For Appellants in Cases 92 and 93 and for Appellees in Cases 94 and 95.

ARKADELPHIA MILLING COMPANY *v.* ST. LOUIS SOUTHWESTERN RAILWAY COMPANY ET AL.

HASTY ET AL., COMPOSING THE PARTNERSHIP OF J. F. HASTY & SONS, *v.* ST. LOUIS SOUTHWESTERN RAILWAY COMPANY ET AL.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ET AL. *v.* SOUTHERN COTTON OIL COMPANY.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY ET AL. *v.* SOUTHERN COTTON OIL COMPANY.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

Nos. 92, 93, 94, 95. Submitted December 17, 1918.—Decided March 3, 1919.

Orders of a state commission fixing railroad rates under legislative authority are state laws within the meaning of the provision of the Judiciary Act of 1891, § 5, and Jud. Code, § 238, allowing direct appeals from the district court to this court in cases in which a law of a State is claimed to contravene the Federal Constitution. P. 141.

When this court, having jurisdiction on constitutional grounds, under Jud. Code, § 238, reverses a final injunctional decree of the district court on direct appeal, with directions to dismiss the bill without prejudice, and the district court, acting under a reservation in its own decree, and within authority for further proceedings allowed by the mandate, assesses and decrees the damages caused by its injunctions, such supplementary decree is part of the main cause and appealable directly to this court. *Id.*

Upon reversal of final injunctional decrees of the district court with directions to dismiss the bills without prejudice, the mandates allowed further proceedings in the causes in conformity with the opinion and decree of this court, according to right and justice, etc. *Held*, that the district court was thus empowered to determine and

decree damages arising under the injunction bonds prior to the reversed decrees. *St. Louis, Iron Mountain & Southern Ry. Co.* v. *McKnight*, 244 U. S. 368, explained. P. 143.

In awarding final injunctions restraining the enforcement of railway rates as fixed by state authority, the district court ordered that the preliminary injunction bonds be released and the sureties thereon discharged from further liability. *Held*, that a failure to appeal from and assign error to this action created no obstacle to the assessment of damages under the bonds, after reversal of the final decrees by this court, where the mandate allowed further proceedings and the district court had retained jurisdiction to make further orders if necessitated by changed conditions. *Id.*

In suits by railroads to determine the adequacy of rates fixed by a state commission, injunction orders restraining enforcement *pendente lite* were obtained on bonds conditioned for refund to shippers if it should eventually be decided that the orders should not have been made. *Held:* (1) That the conditions were broken by ultimate failure of plaintiffs to prove the inadequacy of the rates and ultimate denial of relief on that ground, although there was no specific adjudication that the preliminary injunctions were improper; (2) that the period of the obligation ended with final decrees of the district court awarding permanent injunctions, and that the sureties were not liable for claims arising thereafter and before reversal by this court. Pp. 144, 145.

A railroad company which, in virtue of an erroneous final decree of injunction, collects charges in excess of rates lawfully fixed by a State, is equitably liable to make refunds to the shippers when the decree is reversed on appeal. P. 145.

For the purpose of claiming such restitution in the injunction suit, shippers not named as parties and represented theretofore only by the state railroad commission, but who have been subjected to the injunction as a class and obliged to pay the overcharges, may intervene in a reference to a master, ordered by the district court. P. 146.

And although such reference be ordered under a rule of court relating only to damages recoverable on injunction bonds, it may still furnish foundation for a decree against the railroad on the theory of restitution also, if the merits are fully heard and the facts undisputed. *Id.*

In its relation to the rights of shippers to recover overcharges, whether under injunction bonds or on the theory of restitution, a decree reversing the final injunctive decree of the district court, with a direction to dismiss the bill, is none the less conclusive because

made without prejudice to the right of the carrier to bring future suits under changed conditions. P. 146.

Interest is recoverable upon such overcharges from the dates of payment. P. 147.

Semble, that a carrier which has failed in a suit to enjoin the enforcement of state rates as confiscatory is still free to contest the validity of particular schedules as applied to particular shippers, in supplemental proceedings for restitution. P. 148.

The objection that a state rate discriminates between shippers, in violation of the equal protection clause of the Fourteenth Amendment, is not available to a carrier. P. 149. *Lake Shore & Michigan Southern Ry. Co.* v. *Smith*, 173 U. S. 684, and *Cotting* v. *Kansas City Stock Yards Co.*, 183 U. S. 79, distinguished.

A movement of rough lumber from the woods to milling points in the same State, where it remains for some months in the process of manufacture before being sold and shipped as finished products to purchasers and destinations previously unidentified, is not a movement in interstate commerce, although the shipment of the rough material is actuated by a belief, which is justified by experience and market conditions, that 95% of the products will be marketed and shipped outside of the State. P. 150.

Nos. 92, 93, reversed.

Nos. 94, 95, modified and affirmed.

THE cases are stated in the opinion.

Mr. W. E. Hemingway, *Mr. G. B. Rose*, *Mr. D. H. Cantrell* and *Mr. J. F. Loughborough* for appellants in Nos. 92 and 93, and appellee in Nos. 94 and 95.

Mr. John M. Moore and *Mr. George A. McConnell* for appellees in Nos. 92 and 93, and appellants in Nos. 94 and 95.

MR. JUSTICE PITNEY delivered the opinion of the court.

These four cases were consolidated for the purposes of the hearing in the District Court, and have been treated as consolidated for the purposes of the hearing on appeal. They are so closely related that they may be dealt with in a single opinion.

On July 18, 1908, the two railway companies concerned —the St. Louis, Iron Mountain & Southern, which for brevity may be called the Iron Mountain, and the St. Louis Southwestern, which may be called the Southwestern—brought separate suits in equity in the Circuit Court (now the District Court) of the United States for the Eastern District of Arkansas against the members of the State Railroad Commission in their official capacity, and against two citizens of that State named as frequent shippers of freight upon the railroad lines, for injunctions to restrain the enforcement of certain intrastate freight and passenger rates; setting up that the commission was duly organized under an act of the legislature, and was thereby authorized to fix rates to be charged by the railroads in the State of Arkansas for the transportation of freight and passengers in that State; that the commission had officially adopted a tariff of freight rates applying to all classes and commodities of freight on all railroads operated in the State, and had ordered it to take effect on June 15, 1908; that the rates were unreasonable, unjust, discriminatory, confiscatory, and void; that they did not yield an adequate return for the services rendered; and that the operation of said tariff would deprive complainants of their property without due process of law and deny to them the equal protection of the laws, in violation of § 1 of the Fourteenth Amendment to the Constitution of the United States. It was further alleged that the rates for the transportation of passengers in the State fixed by an act of the legislature passed February 9, 1907, and promulgated by order of the railroad commissioners, were confiscatory and void in their effect upon the complainant railways and, therefore, violative of the Fourteenth Amendment; but the passenger rates are not involved in the present appeals, and need not be further mentioned.

The jurisdiction of the federal court depended solely

upon the ground that the cases arose under the Constitution of the United States, and that the matter in controversy in each case exceeded the jurisdictional amount.

Temporary injunctions were issued in September, 1908, and continued in force during the pendency of the suits. The circuit court upon granting them ordered in each case that the complainant should execute a bond in the penal sum of $200,000, conditioned that complainant should keep a correct account respecting its carriage of passengers and freight, showing the difference between the tariff actually charged and that which would have been charged had the rate inhibited been applied, also showing the particulars of the carriage, and the names of the persons affected as far as practicable, the record to be kept subject to the further order of the court; and further conditioned that if it should eventually be decided that so much of the order as inhibited the enforcement of the rates ought not to have been made, the complainant should within a reasonable time to be fixed by the court refund in every instance to the party entitled the excess in charge over what would have been charged had the inhibited rates been applied, together with lawful interest and damages. Complainants entered into such bonds with sureties. Later an additional injunction bond was required to be and was furnished by each complainant, but without sureties, conditioned substantially as above.

Full answers having been filed by the railroad commission, and testimony having been taken, the cases were brought on to final hearing, and on May 11, 1911, final decrees were made, the same in both cases. They enjoined the commissioners and their successors, the individual shippers named as defendants, and all other patrons of the road in the shipment of freight between stations in the State of Arkansas, from enforcing or attempting to enforce any of the provisions of the freight tariff in question. In addition to this, and after disposing

of the question of costs, each decree ordered that the bond for injunction be released and the sureties thereon discharged from liability, and concluded as follows: "And the court reserves and retains unto itself jurisdiction of the subject matter of this suit and of all parties hereto, to the end that such other and further orders and decrees may be made herein as may become necessary by reason of any changed conditions as to the facts, equities or rights that may hereafter take place or arise."

The railroad commissioners appealed to this court (the defendant shippers having been severed), the cases were heard together, and the decrees of the circuit court were reversed June 16, 1913, with directions to dismiss the bills without prejudice. *Allen* v. *St. Louis, Iron Mountain & Southern Ry. Co.*, 230 U. S. 553. The causes were remanded to the district court, the mandate in each case reciting the reversal and the order remanding the cause with directions to dismiss the bill without prejudice, and concluding as follows. "You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and decree of this Court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding."

Upon the going down of the mandates the district court on July 18, 1913, entered decrees in obedience thereto dismissing the bills without prejudice and dissolving the injunctions; and at the same time and as a part of the same decrees made a reference under a rule of the court to a special master for the purpose of determining the damages alleged to have been sustained by the railroad commissioners by reason of the granting of the temporary and permanent injunctions, declaring: "That in determining these damages, for the recovery of which the said commissioners are not acting for themselves but for the benefit of all persons, shippers, consignees and passengers, who

have sustained any damages by reason of the granting of said injunctions," the master was authorized to examine witnesses and to give notice by publication that all persons having claims against the complainants by reason of the granting of the injunctions should present them within a time specified for the purpose.

Under this reference the appellants in cases Nos. 92 and 93 and the appellee in Nos. 94 and 95 intervened and presented claims for a refund of the difference paid by them in freight rates between the rates prescribed by the commission and those put in force by the railway companies. The master reported favorably upon these claims, dividing the amounts allowed into three periods, the first and second of which included the time elapsed between September 3, 1908, when the interlocutory injunctions were issued, and May 11, 1911, the date of the final decrees, and the third period included the time elapsed between the latter date and July 18, 1913, the date of the decrees entered upon the mandates. The railway companies filed exceptions to the master's report, which were sustained by the district court as to the claims involved in cases Nos. 92 and 93 and overruled as to those involved in Nos. 94 and 95, and a combined decree was made accordingly.

The parties aggrieved desiring to appeal, and being in doubt whether the appeal lay to this court or to the circuit court of appeals, prayed for and were allowed appeals to both courts. Hence the first question that confronts us is whether the decree is the subject of a direct appeal to this court.

We are clear that this question must be answered in the affirmative. The appeals from the final decrees in the main causes were brought direct to this court, because of the constitutional question, under § 5 of the Circuit Court of Appeals Act of March 3, 1891, c. 517, 26 Stat. 827, which provided for such an appeal in the following

cases, among others: "In any case that involves the construction or application of the Constitution of the United States. . . . In any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States." This section, of course, was the predecessor of § 238, Judicial Code, under which the present appeals were taken. And it is plain that the orders of the railroad commission were state laws within the meaning of this provision. *Williams* v. *Bruffy*, 96 U. S. 176, 183; *Atlantic Coast Line R. R. Co.* v. *Goldsboro*, 232 U. S. 548, 555.

The provisions of the Judicial Code which regulate the jurisdiction of the circuit court of appeals originated in § 6 of the Act of 1891. They must be construed together with those provisions of law that confer upon the district court (§ 24, Judicial Code), and formerly conferred upon the circuit court, original jurisdiction in suits of a civil nature arising under the Constitution or laws of the United States, and in suits between citizens of different States. By § 128 of the Code, the circuit courts of appeals are to exercise appellate jurisdiction over the final decisions of the district courts "in all cases other than those in which appeals and writs of error may be taken direct to the Supreme Court, as provided in section two hundred and thirty-eight, unless otherwise provided by law; and, except as provided in sections two hundred and thirty-nine and two hundred and forty, the judgments and decrees of the circuit courts of appeals shall be final in all cases in which the jurisdiction is dependent entirely" upon diversity of citizenship. Section 239 provides for the certification of questions by the circuit court of appeals to this court; § 240 permits this court to review by certiorari any case in which the judgment or decree of the circuit court of appeals is made final; and, by § 241, in any case in which the judgment or decree of that court is not made final, there may be an appeal or writ of error

to this court where the matter in controversy exceeds one thousand dollars besides costs.

The present appeals relate to a decree made in a subordinate action ancillary to the main causes, in which, as has been stated, the federal jurisdiction was invoked solely upon the ground that the cases arose under the Constitution of the United States. It has been held repeatedly that jurisdiction of subordinate actions is to be attributed to the jurisdiction upon which the main suit rested, and hence that where jurisdiction of the main cause is predicated solely on diversity of citizenship and the decree therein is for this reason made final in the circuit court of appeals, the judgments and decrees in the ancillary litigation also are final. *Rouse* v. *Letcher*, 156 U. S. 47; *Gregory* v. *Van Ee*, 160 U. S. 643; *Rouse* v. *Hornsby*, 161 U. S. 588; *Pope* v. *Louisville, &c., Ry. Co.*, 173 U. S. 573, 577.

The proceeding out of which the decree now in question arose was not merely ancillary but was in effect a part of the main causes, taken for the purpose of carrying into effect the decrees of this court reversing the final decrees in the main causes and, at the same time, for the purpose of giving effect to a reservation of jurisdiction by the court below as contained in those final decrees. The supplementary decree that is now before us, since it simply brings to a conclusion those former suits pursuant to our decrees therein, must be treated as involving the construction and application of the Constitution of the United States and as being made in a case in which a state law was claimed to be in contravention of the Federal Constitution, within the meaning of § 238, Judicial Code.

Therefore the motions to dismiss must be denied.

Upon the merits, it will be convenient to take up first the case of the Southern Cotton Oil Company, appellee in Nos. 94 and 95, in whose favor claims were allowed by

the master as against each of the two railways and for each of the periods referred to. The railways excepted upon two grounds: (1) because the final decrees of May 11, 1911, discharging the injunction bonds and releasing the makers thereof from liability had the effect to relieve the railways and their sureties from all liability by reason of the granting of the injunctions; and (2) as to such claims for overcharges as accrued subsequent to the date of the final decrees, on the ground that upon the rendition of those decrees the injunction bonds ceased to be operative and created no further liability, and that the railways incurred no liability to the claimants under the final decrees. The district court overruled the exceptions and sustained the claims of the Oil Company as against the railway companies and the sureties with interest at 6 per cent. per annum from the respective dates that the overcharges were made.

We deal first with so much of the overcharges as accrued prior to the final decrees. In *St. Louis, Iron Mountain & Southern Ry. Co.* v. *McKnight*, 244 U. S. 368, 373, doubt was expressed whether, in view of the form of the mandate, there was any power in the district court to determine the liability of the railway companies upon the bonds. But at that time our attention was not called to the fact that the mandates contained a provision authorizing further proceedings; a provision that removes all question of the power of the district court. *In re Louisville*, 231 U. S. 639, 645; *Louisville* v. *Cumberland Telephone Co.*, 231 U. S. 652.

In support of the contention that the final decrees had the effect of discharging the complainants and their sureties from liability upon the bonds by reason of previous overcharges, it is pointed out that this part of the decrees was not appealed from nor was error assigned to the court's action in vacating the bonds and releasing the sureties. Whether, under the circumstances, the

action of this court in reversing the decrees in respect of their main provisions granting permanent injunctions had the effect of reversing also that portion which discharged the liability upon the injunction bonds is a question upon which we need not pass. For, irrespective of this, those clauses of the final decrees by which the district court retained jurisdiction for the purpose of making such further orders and decrees as might become necessary, coupled with the subsequent mandates of this court permitting further proceedings to be taken in conformity with our opinion and decrees and according to right and justice, empowered the district court to set aside so much of its final decrees as released the railways and their sureties from liabilities theretofore incurred under the injunction bonds. This is what the district court in effect did when it ordered the reference and sustained the claims of the Oil Company so far as they accrued prior to the final decrees.

It is argued that the condition of the bonds—that if it should eventually be decided that the order inhibiting the enforcement of the commission rates should not have been made the complainant should refund, etc.—never was broken because it was not at any time adjudged that the allowance of the temporary injunctions was improper. But this is to construe the bonds according to the letter and not according to the substance. The state statute and the orders of the railroad commission entitled shippers to the benefit of the rates thereby established; and they were thus entitled at all times except as it became necessary to stay the operation of the rates by equitable process in order to permit of a judicial investigation into the question of their adequacy. The burden of proof to show them inadequate was upon the railway companies; and when they failed to sustain this burden they at the same time showed that the injunctions ought not to have been allowed.

As to that portion of the claims which accrued after the final decrees, this, as we already have held in the *McKnight Case*, 244 U. S. 368, 374, was not recoverable upon the injunction bonds, nor against the sureties therein. On a fair construction of the conditions of those instruments, their obligation expired by limitation when the suits were brought to a final conclusion. Hence, to the extent that the supplemental decree now under review awards a recovery against the sureties for claims accruing after the final decrees, it must be modified.

But, in our opinion, this portion of the claims is allowable against the railway companies themselves upon the principle, long established and of general application, that a party against whom an erroneous judgment or decree has been carried into effect is entitled, in the event of a reversal, to be restored by his adversary to that which he has lost thereby. This right, so well founded in equity, has been recognized in the practice of the courts of common law from an early period. Where plaintiff had judgment and execution and defendant afterwards sued out a writ of error, it was regularly a part of a judgment of reversal that the plaintiff in error "be restored to all things which he hath lost by occasion of the said judgment"; and thereupon, in a plain case, a writ of restitution issued at once; but if a question of fact was in doubt, a writ of *scire facias* was first issued. *Anonymous*, Salk. 588; citing *Goodyere* v. *Ince*, Cro. Jac. 246; *Sympson* v. *Juxon*, Cro. Jac. 698; *Vesey* v. *Harris*, Cro. Car. 328; see also Lil. Ent. 641, 650; Arch. Append. 195, 200. The doctrine has been most fully recognized in the decisions of this court. *Bank of the United States* v. *Bank of Washington*, 6 Pet. 8, 17; *Erwin* v. *Lowry*, 7 How. 172, 184; *Northwestern Fuel Co.* v. *Brock*, 139 U. S. 216.

That a course of action so clearly consistent with the principles of equity is one proper to be adopted in an equitable proceeding goes without saying. It is one of the

equitable powers, inherent in every court of justice so long as it retains control of the subject-matter and of the parties, to correct that which has been wrongfully done by virtue of its process. *Northwestern Fuel Co.* v. *Brock*, 139 U. S. 216, 219; *Johnston* v. *Bowers*, 69 N. J. L. 544, 547.

It is argued that the claimant is not in a position to invoke the principle of restitution in this proceeding because it was not a party to the original proceedings, but came in by intervening before the master. This point is unsubstantial. The railroad commission, in defending the rate schedules against the attack of the railway companies, represented all shippers; the permanent injunctions that were awarded by the final decrees restrained all shippers from taking advantage of the commission rates; and during the time that those decrees remained unreversed the railway companies obtained the benefit of the injunction by exacting from this claimant, among others, in addition to the commission rates, those excess charges that form the basis of the present claims. It is a typical case for the application of the principle of restitution; and the district court properly held the commission to be the representative of the shippers for this purpose.

The suggestion that the order of reference was made under a rule of court that related only to damages recoverable on injunction bonds, and furnished no foundation for a decree against the railways on the theory of restitution, is without weight. The companies were fully heard upon the merits, and there is no question about the facts.

In behalf of the railways, it is argued that the reversal of the decrees of May 11, 1911, "without prejudice," left the rights of the parties still in doubt, and thus rendered it improper for the district court to award damages against the railways, either on the basis of a breach of the injunction bonds or on the basis of restitution.

But it seems to us that the rights of the present shippers were so clear as to make an allowance of damages upon the injunction bonds and restitution upon the reversal of the decrees manifestly their due. That the reversal was "without prejudice" did not deprive the decrees of conclusiveness as to past transactions, but only prevented them from being a bar to future suits for injunction upon a showing of changed conditions. *Missouri* v. *Chicago, Burlington & Quincy R. R. Co.*, 241 U. S. 533, 539.

The contention that there was error in allowing interest upon the amount of the overcharges is unsubstantial. The damage was complete when the overcharges were made, and as they were wrongfully made and without consent of the shippers, interest ran from that date on general principles.

For these reasons, the decree in favor of the Southern Cotton Oil Company, modified so as to relieve the sureties from that part of the claims which accrued after the final decrees of May 11, 1911, will be affirmed.

The claims of both the Arkadelphia Milling Company (No. 92) and Hasty & Sons (No. 93) were based upon the difference between rates charged on rough lumber from the forest to milling points and the rates provided in the commission tariff on such movements. The tariff contained certain maximum rates on lumber of this character applicable generally, and in addition certain "rough material rates" much lower than the others, conditioned upon a certain percentage of the manufactured product being shipped over the same line that brought in the rough material. The railway companies excepted to the allowance in favor of each of these appellants upon the ground that the "rough material rates" were discriminatory against shippers who did not reship the specified percentages of the finished product. As to the Hasty claim, there was an additional exception based upon the

ground that the movement of rough material to milling points in the State and the subsequent forwarding of the finished product to market points outside of the State constituted interstate commerce, so that the rough material rates prescribed by the state commission were not applicable. The court sustained the exceptions on both grounds.

To take up first the question of discrimination: The tariff gave the benefit of the rough material rates only where the shipper transported over the line of the carrier a certain percentage of the product manufactured from the rough material. The master found that the condition was complied with by these shippers and sustained the allowances accordingly.

The district court sustained the defense of discrimination upon the authority of *Lake Shore & Michigan Southern Ry. Co.* v. *Smith*, 173 U. S. 684, and *Cotting* v. *Kansas City Stock Yards Co.*, 183 U. S. 79.

We assume, without deciding, that, notwithstanding the general result adverse to the railway companies in the main suits, they were still at liberty to dispute the validity of the rate schedule as it related to particular shippers. See *Chicago, Milwaukee & St. Paul Ry. Co.* v. *Minnesota*, 134 U. S. 418, 460, concurring opinion of Mr. Justice Miller; *St. Louis & San Francisco Ry. Co.* v. *Gill*, 156 U. S. 649, 659, 666; *Ex parte Young*, 209 U. S. 123; *Missouri* v. *Chicago, Burlington & Quincy R. R. Co.*, 241 U. S. 533, 538.

In our opinion, however, the district court erred in its ruling. The rough material rates were but parts of a general schedule that covered a wide field. This schedule was established in the exercise of the legislative authority of the State, and could not be set aside by the court on the ground of discrimination unless it amounted to a denial of the equal protection of the laws guaranteed by the Fourteenth Amendment.

But there is nothing to show that the rough material rates wrought any discrimination against the railway companies. They were applicable upon all railways alike. If there was—not in the least intimating that there was—undue discrimination as against small shippers or those who had no occasion to obtain transportation for the manufactured product over the line of the same carrier, this was not a matter of which the railways could complain. It is most thoroughly established that before one may be heard to strike down state legislation upon the ground of its repugnancy to the Federal Constitution he must bring himself within the class affected by the unconstitutional feature. *Plymouth Coal Co.* v. *Pennsylvania*, 232 U. S. 531, 544; *Jeffrey Mfg. Co.* v. *Blagg*, 235 U. S. 571, 576; *Mallinckrodt Works* v. *St. Louis*, 238 U. S. 41, 54; *Cusack Co.* v. *Chicago*, 242 U. S. 526, 530.

Lake Shore & Michigan Southern Ry. Co. v. *Smith*, 173 U. S. 684, did not set aside this established principle. The discrimination in favor of certain patrons, there referred to, was laid hold of rather as showing the unreasonable character of the regulation. The authority of that case is not to be extended. *Louisville & Nashville R. R. Co.* v. *Kentucky*, 183 U. S. 503, 511; *Pennsylvania R. R. Co.* v. *Towers*, 245 U. S. 6.

Cotting v. *Kansas City Stock Yards Co.*, 183 U. S. 79, is not at all in point. While the opinion of Mr. Justice Brewer covers a wide range of discussion, a majority of the court (p. 114) placed the decision upon the ground that the statute of Kansas applied only to a single company, and not to others engaged in like business in the State, and thereby denied to that company the equal protection of the laws.

There remains the question whether the shipments by J. F. Hasty & Sons of rough material from the forest to the milling point, followed by the forwarding of the finished product to points outside of the State, constituted inter-

state commerce. If they did, it is obvious that the state tariff was not applicable to them.

The following statement, taken from the record, shows the admitted facts as to the course of business:

"When the rough material reached the mills, it was manufactured into finished staves, headings and hoops, and in this condition shipped to whoever purchased them. The purchaser uses them in making barrels, casks, etc. The wastings in the finishing of said articles from the rough material were either disposed of for firewood, or destroyed. When the rough material left the woods, a bill of lading was issued from the woods to the mill. When the rough material reached the mill, it was finished into some or all of the articles described, when it was stacked in the yards or placed in kilns to dry. The process of manufacturing and drying occupied several months, or on an average this process would be gone through with, the finished products sold and shipped to the purchaser, in about five months from the date the rough material was received at the mill. The claimants classified the different parts after they came from the mill completely finished, and made sales from such stock. The markets for the manufactured articles were almost altogether in other states than Arkansas, or in foreign countries, and about ninety-five per cent. of the sale of finished articles, that is, of the total outbound shipments, were made for delivery at points outside the State of Arkansas, the remaining five per cent. being sold and delivered, or shipped to points within the State of Arkansas. At the time the rough material was shipped to the mills, the mills did not know to whom they would sell the finished product, or to what points it would be shipped, but did know that there was little market for the finished articles in the State of Arkansas, and expected that they would sell ninety-five per cent. of said finished articles and ship them to points outside the State of Arkansas.

"It was the intention of all the claimants herein, at the time they shipped the rough material into the milling points, to mill said rough material with the object of selling the said finished product and shipping it out as soon as practicable, and all of them knew and intended at the time they brought the rough material into the mill, on account of previous course of dealings in the business, that ninety-five per cent. of the finished product would be by them shipped to points outside the State of Arkansas.

"The claimants paid the usual property tax to the State of Arkansas on their stock of materials on hand at the milling point, whether said stock was in the rough or finished, the amount of the tax being arrived at according to the methods in use in the State of Arkansas by the use of an average basis."

Upon the facts as stated, it is our opinion that the district court erred in treating the movement of the rough lumber from the woods to the milling point as interstate commerce. It is not merely that there was no continuous movement from the forest to the points without the State, but that when the rough material left the woods it was not intended that it should be transported out of the State, or elsewhere beyond the mill, until it had been subjected to a manufacturing process that materially changed its character, utility, and value. The raw material came to rest at the mill, and after the product was manufactured it remained stored there for an indefinite period—manufacture and storage occupying five months on the average—for the purpose of finding a market. Where it would eventually be sold no one knew. And the fact that previous experience indicated that 95 per cent. of it must be marketed outside of the State, so that this entered into the purpose of the parties when shipping the rough material to the mill, did not alter the character of the latter movement. The question is too well settled by

previous decisions to require discussion. *Coe* v. *Errol*, 116 U. S. 517, 525; *Bacon* v. *Illinois*, 227 U. S. 504, 515–516; *McCluskey* v. *Marysville & Northern Ry. Co.*, 243 U. S. 36.

The distinction between these cases and those cited to sustain the decision of the district court (*Swift & Co.* v. *United States*, 196 U. S. 375, 398; *Ohio R. R. Commission* v. *Worthington*, 225 U. S. 101; *Texas & New Orleans R. R. Co.* v. *Sabine Tram Co.*, 227 U. S. 111; *Louisiana R. R. Commission* v. *Texas & Pacific Ry. Co.*, 229 U. S. 336) is so evident that particular analysis may be dispensed with.

The exceptions sustained by the district court to the claims of the Arkadelphia Milling Co. and Hasty & Sons having been found to be untenable, it results that these claims should be allowed as against the railway companies and their sureties, so far as they arose before the final decrees, and as against the railway companies only, so far as they arose after the final decrees.

Nos. 92 and 93, decree reversed; Nos. 94 and 95, decree modified and affirmed; and the cause remanded for further proceedings in conformity with this opinion.